

2002-04

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 143

THURSDAY, 1 APRIL 2004

Contents

1	Meeting of Senate	3313
2	Notices.....	3313
3	Order of Business—Rearrangement.....	3313
4	Leave of Absence.....	3313
5	Postponements.....	3314
6	Death of Sir Rupert Hamer, AC, KCMG.....	3314
7	Social Issues—National Day of Action for Seniors.....	3314
8	Culture and the Arts—Parliament House Art Collection.....	3315
9	Human Rights—Sexuality Discrimination—Order for Production of Documents.....	3315
10	Immigration—Ministerial Discretion—Order for Production of Documents....	3316
11	Hours of Meeting and Routine of Business—Variation	3317
12	Economics Legislation Committee—Reference	3318
13	Lindeberg Grievance—Select Committee—Appointment.....	3318
14	Parliamentary Zone—Capital Works Proposal—Approval	3320
15	Environment—Endangered Species	3320
16	Environment—Tasmania—Endangered Species.....	3320
17	Foreign Affairs, Defence and Trade References Committee—Extension of Time to Report	3321
18	Economics Legislation Committee—Extension of Time to Report.....	3321
19	Taxation—Charities	3321
20	Privileges—Standing Committee—118th Report.....	3321
21	Publications—Standing Committee—16th Report.....	3322
22	Environment, Communications, Information Technology and the Arts Legislation Committee—Additional Information—Budget Estimates 2003-04.....	3322
23	Public Accounts and Audit—Joint Statutory Committee—399th Report.....	3322
24	Foreign Affairs, Defence and Trade Legislation Committee—Additional Information—Budget Estimates 2003-04.....	3322
25	Foreign Affairs, Defence and Trade Legislation Committee—Report—Additional Estimates 2003-04.....	3323
26	Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004	3323
27	Law and Justice Legislation Amendment Bill 2004	3323

28	Energy Grants (Cleaner Fuels) Scheme Bill 2003	3323
29	Customs Tariff Amendment Bill (No. 2) 2003—Excise Tariff Amendment Bill (No. 1) 2003—Consideration	3324
30	Customs Tariff Amendment Bill (No. 2) 2003 Excise Tariff Amendment Bill (No. 1) 2003.....	3325
31	Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004	3325
32	Order of Business—Rearrangement.....	3325
33	Intelligence Services Amendment Bill 2004	3325
34	Order of Business—Rearrangement.....	3326
35	Telecommunications (Interception) Amendment Bill 2004	3326
36	Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004	3327
37	Taxation Laws (Clearing and Settlement Facility Support) Bill 2003	3328
38	Superannuation Legislation Amendment (Family Law) Bill 2002	3328
39	Dairy Produce Amendment Bill 2003	3343
40	Vacancy in the Representation of Victoria—Choice of Mitchell Peter Fifield..	3343
41	Questions	3344
42	Unparliamentary Language—Statement by President	3344
43	Defence—Intelligence Briefing—Answers to Questions	3344
44	Foreign Affairs, Defence and Trade References Committee—Presiding Officers’ Response—Australia’s Relations with Papua New Guinea and the Island States of the South-west Pacific.....	3344
45	Environment—Genetically-modified Organisms—Order for Production of Documents—Documents	3345
46	Documents.....	3345
47	Telecommunications (Interception) Amendment Bill 2004	3345
48	Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2003	3347
49	Communications Legislation Amendment Bill (No. 2) 2003.....	3349
50	Military Rehabilitation and Compensation Bill 2003 Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003.....	3352
51	Migration Legislation Amendment Bill (No. 1) 2002	3352
52	Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003	3353
53	Order of Business—Rearrangement.....	3353
54	Kyoto Protocol Ratification Bill 2003 [No. 2].....	3353
55	Appropriation (Parliamentary Departments) Bill (No. 2) 2003-2004 Appropriation Bill (No. 3) 2003-2004 Appropriation Bill (No. 4) 2003-2004.....	3354
56	Advance to the Finance Minister—2002-03	3354
57	Committees—Changes in Membership.....	3354
58	Notices of Motion Withdrawn	3355
59	Communications Legislation Amendment Bill (No. 2) 2003.....	3355
60	Adjournment	3357
61	Attendance.....	3357

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 NOTICES

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

- (a) commends Taiwan for its contributions to international health, particularly in assisting in developing countries;
- (b) acknowledges the need for a fully integrated global healthcare system and recognises the appropriateness of Taiwan's cooperation with World Health Organization (WHO) activities;
- (c) recognises that Taiwan's participation as an observer in the WHO would be consistent with a fully-integrated global healthcare system; and
- (d) looks forward to Taiwan's participation in the World Health Assembly as an observer, through consensus of all members. (*general business notice of motion no. 854*)

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen): To move 15 sitting days after today—That the Excise Amendment Regulations 2004 (No. 1), as contained in Statutory Rules 2004 No. 27 and made under the *Excise Act 1901*, be disallowed.

Senator Tchen, by leave, made a statement relating to the notice of motion.

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen): To move 15 sitting days after today—That Temporary Order No. 4 of 2003, made under subsection 43(8) of the *Fisheries Management Act 1991*, be disallowed.

Senator Tchen, by leave, made a statement relating to the notice of motion.

3 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Local Government, Territories and Roads (Senator Ian Campbell) moved—That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004.

No. 9 Taxation Laws (Clearing and Settlement Facility Support) Bill 2003.

No. 10 Superannuation Legislation Amendment (Family Law) Bill 2002.

No. 11 Dairy Produce Amendment Bill 2003.

Debate ensued.

Question put and passed.

4 LEAVE OF ABSENCE

Senator Harris, by leave, moved—That leave of absence be granted to Senator Harris for the period 11 May to 13 May 2004, on account of family matters.

Question put and passed.

5 POSTPONEMENTS

Items of business were postponed as follows:

General business notice of motion no. 844 standing in the name of Senator Ridgeway for today, relating to World Health Day and road safety, postponed till 11 May 2004.

General business notice of motion no. 849 standing in the name of Senator Allison for today, relating to nuclear non-proliferation and disarmament, postponed till 11 May 2004.

General business notice of motion no. 850 standing in the name of Senator Allison for today, proposing the establishment of a select committee on tobacco, postponed till 11 May 2004.

6 DEATH OF SIR RUPERT HAMER, AC, KCMG

Senator Allison, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 848—That the Senate—

- (a) notes that Sir Rupert Hamer, AC, KCMG, a former Victorian State Premier, died on 23 March 2004 aged 87;
- (b) acknowledges in particular Sir Rupert's contribution to public life, including his active service in World War II, his contribution to the abolition of the death penalty, his pioneering efforts in setting up national parks and the Environment Protection Authority in Victoria, and his commitment to principles of democracy, the Republic, the arts, heritage and young people; and
- (c) expresses its deepest condolences to Sir Rupert's wife, Lady April Hamer and their children Christopher, Julia, Sarah and Alistair.

Question put and passed.

7 SOCIAL ISSUES—NATIONAL DAY OF ACTION FOR SENIORS

Senator Allison, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 847—That the Senate—

- (a) notes that:
 - (i) 6 April 2004 is a national day of action for seniors, observed in order to raise issues of concern for older Australians,
 - (ii) the majority of older people are active and healthy, contributing to the community, pursuing leisure activities and family support, undertaking voluntary work and living independently,
 - (iii) some 10 per cent of people aged over 70 years are presently in residential care, and
 - (iv) the need for residential care is substantially reduced for the frail or ill aged when there is effective community support; and
- (b) calls on the Government to urgently address community concerns about ongoing viability and choice of residential care, as reflected in the withdrawal from the aged care sector of significant non-profit organisations, including the Salvation Army, by:
 - (i) immediately releasing the finalised Hogan Report on aged care funding, to inform the community prior to a government response through the Budget process,

- (ii) responding to claims that the present indexation measure the Government uses to increase recurrent funding is inadequate, and
- (iii) reporting on the take-up of aged care nursing scholarships and appropriate specialist accommodation for young people with high care needs.

Question put and passed.

8 CULTURE AND THE ARTS—PARLIAMENT HOUSE ART COLLECTION

Senator Ridgeway amended general business notice of motion no. 852 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes the resolution of the Senate of 30 March 2004 rejecting the recommendation of the review of the Parliament House art collection that it should not, as a rule, collect the works of emerging artists; and
- (b) resolves that the President of the Senate:
 - (i) immediately make representations to the Speaker of the House of Representatives seeking concurrence with the resolution, and
 - (ii) report to the Senate by 17 June 2004 on the instructions the Presiding Officers have given, indicating how the continuation of the policy of collecting the works of emerging artists will be implemented as a core component of the Parliament House art collection acquisition policy.

Question put and passed.

9 HUMAN RIGHTS—SEXUALITY DISCRIMINATION—ORDER FOR PRODUCTION OF DOCUMENTS

Senator Greig, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 845—That there be laid on the table, by the Minister representing the Attorney-General (Senator Ellison), no later than 5 pm on Tuesday, 15 June 2004, the following documents:

- (a) the Government's formal response to the United Nations Human Rights Committee finding on 6 August 2003 in the case of *Young v Australia*, that:
 - (i) the Australian Government's refusal to grant Mr Young a pension on the ground that he does not meet with the definition of 'dependant', for having been in a same-sex relationship, violates his rights under article 26 of the International Covenant on Civil and Political Rights on the basis of his sexual orientation,
 - (ii) the Australian Government provided no argument on how the distinction between same-sex partners and unmarried heterosexual partners is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction was advanced,
 - (iii) as a victim of a violation of article 26, Mr Young is entitled to an effective remedy, including the reconsideration of his pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law, and
 - (iv) the Australian Government is under an obligation, as a signatory to the First Optional Protocol of the International Covenant on Civil and Political Rights, to ensure that similar violations of the Covenant do not occur in the future; and

- (b) an explanation as to why a response requested by the United Nations Human Rights Committee within 90 days of its finding will, by that time, have taken almost 10 months to produce.

Question put and passed.

10 IMMIGRATION—MINISTERIAL DISCRETION—ORDER FOR PRODUCTION OF DOCUMENTS

Senator Ludwig, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 843—That there be laid on the table by the Minister for Immigration and Multicultural and Indigenous Affairs, no later than 5 pm on 12 May 2004, the following documents relating to the exercise of ministerial discretion under sections 351 and 417 of the *Migration Act 1958*:

- (a) the documentary evidence from the case histories relating to the applications for the Minister to exercise his discretionary powers concerning which Mr Karim Kisrwni made representations on behalf of the applicant to the former Minister for Immigration and Multicultural and Indigenous Affairs (Mr Ruddock) which resulted in the Minister intervening on behalf of the applicant, indicating the following:
 - (i) the Refugee Review Tribunal (RRT) or Migration Review Tribunal (MRT) outcome in relation to each case,
 - (ii) the outcome of the Minister's consideration pursuant to sections 351 or 417, and the date of the Minister's decision,
 - (iii) an indication of whether the case at any stage was assessed by officers of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) as falling outside the Minister's guidelines,
 - (iv) the date of any such assessment,
 - (v) the date on which each case was first referred to the Minister's office, and an indication of whether at that stage the case was a scheduled case (assessed as outside the guidelines) or a full submission,
 - (vi) the date on which the file was the subject of a submission (other than on the schedule) to the Minister's office,
 - (vii) details of any requests by the Minister's office for a submission in relation to any of the files, as referred to in the letter, including the date, and any documentary record, of such requests,
 - (viii) details of the date or dates and nature of the contact with Mr Kisrwni referred to in the letter, and
 - (ix) copies of any correspondence or other documentation evidencing such contact;
- (b) copies of all case files for all cases involving representations by Mr Cameron MP and Gateway Pharmaceuticals to Mr Ruddock to intervene on behalf of applicants and where the Minister exercised his powers under sections 351 and 417;
- (c) the documentary evidence for each of the 105 case histories referred to in evidence given by DIMIA officers on 31 October 2003 to the Select Committee on Ministerial Discretion in Migration Matters, indicating in each case the following:
 - (i) the nationality of the applicant,

- (ii) a timeline of the application process including processing of the ministerial intervention request subsequent to the decisions of either the RRT or MRT,
 - (iii) details of decisions made by departmental officers and review tribunals in relation to each applicant,
 - (iv) whether the case was assessed by the department as meeting the guidelines for ministerial intervention or placed on a schedule as being outside the guidelines and the date of such decisions,
 - (v) details including the date of any communication from the Minister or the Minister's office regarding the case, including any request for a full submission, and
 - (vi) names of any persons who made representations on behalf of the applicant;
- (d) all documents on case files relating to the exercise of the ministerial discretionary powers under sections 351 and 417 in the cases of Ibrahim Sammaki and Bedweny Hbeiche; and
- (e) all documents on case files relating to the exercise of the ministerial discretionary powers under sections 351 and 417 in cases involving representations by Mr Fahmi Hussain.

Question put and passed.

11 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION

The Minister for Local Government, Territories and Roads (Senator Ian Campbell), at the request of the Minister for Family and Community Services (Senator Patterson), amended government business notice of motion no. 1 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That, on Thursday, 1 April 2004—

- (a) the hours of meeting shall be 9.30 am to adjournment;
- (b) if the Senate is sitting at 11.30 pm, the sitting of the Senate shall be suspended till 9 am on Friday, 2 April 2004;
- (c) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) not be proceeded with;
- (d) the routine of business from not later than 4.30 pm shall be government business only;
- (e) divisions may take place after 6 pm; and
- (f) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below:
 - Telecommunications (Interception) Amendment Bill 2004
 - Appropriation (Parliamentary Departments) Bill 2003-2004
 - Appropriation Bill (No. 3) 2003-2004
 - Appropriation Bill (No. 4) 2003-2004
 - Higher Education Legislation Amendment Bill 2004
 - Intelligence Services Amendment Bill 2004
 - Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004

- Customs Tariff Amendment Bill (No. 2) 2003 (subject to the agreement of the Senate to consider the bill)
 - Excise Tariff Amendment Bill (No. 1) 2003 (subject to the agreement of the Senate to consider the bill)
 - Communications Legislation Amendment Bill (No. 2) 2003
 - Taxation Laws (Clearing and Settlement Facility Support) Bill 2003
 - Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004
 - Superannuation Legislation Amendment (Family Law) Bill 2002
 - Dairy Produce Amendment Bill 2003
 - Kyoto Protocol Ratification Bill 2003 [No. 2];
- and any messages from the House of Representatives in relation to:
- Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2003
 - Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003
 - Migration Legislation Amendment Bill (No. 1) 2002.

Statements by leave: Senators Ludwig, Ian Campbell, Allison, Harradine and Mackay, by leave, made statements relating to the motion.

Question put and passed.

12 ECONOMICS LEGISLATION COMMITTEE—REFERENCE

Senator O'Brien, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—That the provisions of the Tourism Australia Bill 2004 be referred to the Economics Legislation Committee for inquiry and report by 13 May 2004.

Question put and passed.

13 LINDEBERG GRIEVANCE—SELECT COMMITTEE—APPOINTMENT

Senator Harris, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 827—

- (1) That a select committee, to be known as the Select Committee on the Lindeberg Grievance, be appointed to inquire into and report by 5 October 2004 on the following matters:
 - (a) whether any false or misleading evidence was given to the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases or the Committee of Privileges in respect of the matters considered in its 63rd and 71st reports and whether any contempt was committed in that regard, having regard to previous inquiries by Senate committees relating to the shredding of the Heiner documents, the fresh material that has subsequently been revealed by the Dutney Memorandum, and Exhibits 20 and 31 tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions, and any other relevant evidence; and
 - (b) the implications of this matter for measures which should be taken:
 - (i) to prevent the destruction and concealment by government of information which should be available in the public interest,
 - (ii) in relation to the protection of children from abuse, and

- (iii) for the appropriate protection of whistleblowers.
- (2) That the committee consist of 7 senators, 3 nominated by the Leader of the Government in the Senate, 2 nominated by the Leader of the Opposition in the Senate, 1 nominated by the Leader of the Australian Democrats and 1 nominated by the One Nation Party.
 - (3) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.
 - (4) That:
 - (a) the chair of the committee be elected by and from the members of the committee;
 - (b) in the absence of agreement on the selection of a chair, duly notified to the President, the allocation of the chair be determined by the Senate;
 - (c) the deputy chair of the committee be elected by and from the members of the committee immediately after the election of the chair;
 - (d) the deputy chair act as chair when there is no chair or the chair is not present at a meeting; and
 - (e) in the event of the votes on any question before the committee being equally divided, the chair, or deputy chair when acting as chair, have a casting vote.
 - (5) That the quorum of the committee be a majority of the members of the committee.
 - (6) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken, and such interim recommendations as it may deem fit.
 - (7) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any such subcommittee any of the matters which the committee is empowered to consider, and that the quorum of the subcommittee be a majority of the members appointed to the subcommittee.
 - (8) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint investigative staff and persons, including senior counsel, with specialist knowledge for the purposes of the committee, with the approval of the President.
 - (9) That the committee have access to, and have power to make use of, the evidence and records of the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases and the Committee of Privileges in respect of its 63rd and 71st reports.
 - (10) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

Question put and passed.

14 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—APPROVAL

The Minister for Local Government, Territories and Roads (Senator Ian Campbell), at the request of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) and pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 2—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the design and content of the Centenary of Women's Suffrage commemorative fountain at the Old Parliament House gardens.

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

Question put and passed.

15 ENVIRONMENT—ENDANGERED SPECIES

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 853—That the Senate, concerned for Australia's rare and endangered species of wildlife and plants, calls on the Government to protect the habitats of such species wherever possible.

Question put and passed.

16 ENVIRONMENT—TASMANIA—ENDANGERED SPECIES

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 851—That the Senate—

- (a) notes that areas subject to clear felling, burning and the use of 1080 poisoning of wildlife under the Tasmanian Regional Forest Agreement are habitat for rare or endangered species; and
- (b) calls on the Government to ensure that each area is fully assessed for the presence of such species and that the Minister for the Environment and Heritage (Dr Kemp) is informed before any habitat destruction is permitted.

Question put.

The Senate divided—

AYES, 8

Senators—

Allison (Teller)	Brown	Lees	Nettle
Bartlett	Greig	Murray	Ridgeway

NOES, 40

Senators—

Bishop	Ferguson	Lightfoot	O'Brien
Boswell	Ferris (Teller)	Ludwig	Ray
Brandis	Forshaw	Lundy	Santoro
Buckland	Harris	Macdonald, Sandy	Scullion
Calvert	Heffernan	Mackay	Stephens
Carr	Hogg	Marshall	Tchen
Chapman	Humphries	Mason	Tierney
Denman	Hutchins	McGauran	Troeth
Eggleston	Kirk	McLucas	Watson
Evans	Knowles	Moore	Wong

Question negatived.

17 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Ferris, at the request of the Deputy Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Sandy Macdonald) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 841—That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the effectiveness of the Australian military justice system be extended to 5 August 2004.

Question put and passed.

18 ECONOMICS LEGISLATION COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Ferris, at the request of the Chair of the Economics Legislation Committee (Senator Brandis) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 842—That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Treasury Legislation Amendment (Professional Standards) Bill 2003 be extended to 12 May 2004.

Question put and passed.

19 TAXATION—CHARITIES

Senator Allison, at the request of Senator Cherry and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 846—That the Senate—

- (a) notes the significant impact that the loss of ‘public benevolent institution’ status will have on the employees of organisations in the health and disability services sector, such as the Intellectual Disability Services Council, the Metropolitan Domiciliary Care, the Julia Farr Centre and the Institute of Medical and Veterinary Science; and
- (b) calls on the Government to:
 - (i) declare a moratorium to prevent around 3 000 staff in the sector losing up to \$15 000 in after-tax salary from 1 April 2004,
 - (ii) offer workers in the health and disability sector who will be faced with the loss of fringe benefit tax exemptions the same concessions that were recently provided to employees of public hospitals and public ambulance services, and
 - (iii) respond to the recommendation of the 2001 charities inquiry and introduce a new definition of ‘benevolent charity’ to ease the uncertainty within the charities sector.

Question put and passed.

20 PRIVILEGES—STANDING COMMITTEE—118TH REPORT

The Chair of the Standing Committee of Privileges (Senator Ray), tabled the following report:

Privileges—Standing Committee—118th report—Joint meetings of the Senate and the House of Representatives on 23 and 24 October 2003, dated April 2004.

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

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

Debate ensued.

Debate adjourned till the next day of sitting, the Leader of the Australian Democrats (Senator Bartlett) in continuation.

21 PUBLICATIONS—STANDING COMMITTEE—16TH REPORT

Senator Eggleston, at the request of the Chair of the Standing Committee on Publications (Senator Colbeck), tabled the following report:

PUBLICATIONS COMMITTEE**16TH REPORT**

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

The Committee, having considered documents presented to the Parliament since 10 March 2004, recommends that the following be printed:

Human Rights and Equal Opportunity Commission—Reports—

No. 26—Inquiry into a complaint by Mr Kenneth Douglas of age discrimination in the Australian Defence Force.

No. 27—Inquiry into a complaint by Ms KJ concerning events at Woomera Immigration Reception and Processing Centre between 29-30 March 2002.

Productivity Commission—Report for 2002-03.

Wheat Export Authority—Report for 1 October 2002 to 30 September 2003.

Senator Richard Colbeck

Chairman

1 April 2004.

Senator Eggleston moved—That the report be adopted.

Question put and passed.

22 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE—ADDITIONAL INFORMATION—BUDGET ESTIMATES 2003-04

The Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee (Senator Eggleston) tabled additional information received by the committee (Budget estimates 2003-04 (Supplementary)—vols 2 to 4).

23 PUBLIC ACCOUNTS AND AUDIT—JOINT STATUTORY COMMITTEE—399TH REPORT

Senator Lundy, on behalf of the Joint Committee of Public Accounts and Audit, tabled the following report:

Public Accounts and Audit—Joint Statutory Committee—399th report—Inquiry into the management and integrity of electronic information in the Commonwealth, dated March 2004.

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

Question put and passed.

24 FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE—ADDITIONAL INFORMATION—BUDGET ESTIMATES 2003-04

Senator Eggleston, at the request of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee (Senator Sandy Macdonald), tabled *Hansard* record of proceedings [2 vols] and additional information received by the committee (Budget estimates 2003-04 (Supplementary)—vols 1 and 2).

**25 FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE—REPORT—
ADDITIONAL ESTIMATES 2003-04**

Pursuant to order, Senator Eggleston, at the request of 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—Additional estimates 2003-04—Report, dated April 2004 and *Hansard* record of proceedings [4 vols].

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

**26 COMMONWEALTH ELECTORAL AMENDMENT (REPRESENTATION IN THE HOUSE OF
REPRESENTATIVES) BILL 2004**

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

Message no. 557, dated 31 March 2004—A Bill for an Act to amend the *Commonwealth Electoral Act 1918*, and for related purposes.

The Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

On the motion of Senator Buckland the debate was adjourned.

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

27 LAW AND JUSTICE LEGISLATION AMENDMENT BILL 2004

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

Message no. 556, dated 31 March 2004—A Bill for an Act to amend various Acts relating to law and justice, and for related purposes.

The Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

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.

28 ENERGY GRANTS (CLEANER FUELS) SCHEME BILL 2003

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

Message no. 555, dated 31 March 2004—Energy Grants (Cleaner Fuels) Scheme Bill 2003.

29 CUSTOMS TARIFF AMENDMENT BILL (NO. 2) 2003—EXCISE TARIFF AMENDMENT BILL (NO. 1) 2003—CONSIDERATION

Order of the day read for the adjourned debate on the motion of the Minister for Revenue and Assistant Treasurer (Senator Coonan)—That the government business order of the day for the further consideration of the Customs Tariff Amendment Bill (No. 2) 2003 and the Excise Tariff Amendment Bill (No. 1) 2003 be called on immediately.

Documents: Pursuant to the order of the Senate of 16 October 2002, the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) tabled the following documents:

Transport—Ethanol—Order for production of documents—Documents released under the Freedom of Information Act—

Copies of documents provided by the Prime Minister's office and the Department of the Prime Minister and Cabinet.

Schedule listing all documents provided by the Department of the Prime Minister and Cabinet, the Department of Industry, Tourism and Resources, the Treasury and the Department of Agriculture, Fisheries and Forestry.

Debate resumed.

Question put.

The Senate divided—

AYES, 35

Senators—

Abetz	Colbeck	Kemp	Payne
Allison	Eggleston (Teller)	Knowles	Ridgeway
Barnett	Ellison	Lees	Scullion
Bartlett	Ferguson	Lightfoot	Tchen
Boswell	Greig	Macdonald, Ian	Tierney
Brandis	Harradine	Macdonald, Sandy	Troeth
Calvert	Harris	Mason	Vanstone
Campbell, Ian	Heffernan	McGauran	Watson
Chapman	Humphries	Murray	

NOES, 22

Senators—

Bolkus	Evans	Mackay	O'Brien
Brown	Forshaw	Marshall	Ray
Buckland (Teller)	Hogg	McLucas	Stephens
Collins	Hutchins	Moore	Wong
Conroy	Kirk	Murphy	
Denman	Lundy	Nettle	

Question agreed to.

30 CUSTOMS TARIFF AMENDMENT BILL (NO. 2) 2003

EXCISE TARIFF AMENDMENT BILL (NO. 1) 2003

Order of the day read for the adjourned debate on the motion of the Special Minister of State (Senator Abetz)—That these bills be now read a second time.

Debate resumed.

Question put and passed.

Bills read a second time.

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

On the motion of the Minister for Justice and Customs (Senator Ellison) the bills were read a third time.

31 TEXTILE, CLOTHING AND FOOTWEAR STRATEGIC INVESTMENT PROGRAM AMENDMENT BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That this bill be now read a second time—and on the amendment moved by Senator Carr:

At the end of the motion, add “but the Senate recognises the importance of innovation in the textile, clothing and footwear sector and the need for policies that stimulate long-term growth and economic prosperity”.

Debate resumed.

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

Main question, as amended, put and passed.

Bill read a second time.

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

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

32 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Justice and Customs (Senator Ellison) moved—That intervening business be postponed till after consideration of government business order of the day no. 4 (Intelligence Services Amendment Bill 2004).

Question put and passed.

33 INTELLIGENCE SERVICES AMENDMENT BILL 2004

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

Debate resumed.

Document: The Special Minister of State (Senator Abetz) tabled the following document:

ASIO, ASIS and DSD—Joint Statutory Committee—Report—Review of the Intelligence Services Amendment Bill 2003—Government response.

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 Greig moved the following amendment:

Page 6 (after line 15), at the end of the bill, add:

Inspector-General of Intelligence and Security Act 1986

4 After subsection 35(2B)

Insert:

(2C) The Inspector-General must include in a report prepared under subsection (1) the Inspector-General's comments on the extent of compliance by ASIS, during the year to which the report relates, with guidelines issued under subclause 1(6) of Schedule 2 of the *Intelligence Services Act 2001*.

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 Lightfoot) reported accordingly.

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

34 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Defence (Senator Hill) moved—That intervening business be postponed till after consideration of government business order of the day no. 5 (Telecommunications (Interception) Amendment Bill 2004).

Question put and passed.

35 TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

At 12.45 pm: Debate was interrupted.

36 **COMMONWEALTH ELECTORAL AMENDMENT (REPRESENTATION IN THE HOUSE OF REPRESENTATIVES) BILL 2004**

Order of the day read for the adjourned debate on the motion of the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald)—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:

Page 9 (after line 9), at the end of the bill, add:

16 After section 306B

Insert:

306C Foreign donations, gifts etc. prohibited

- (1) It is unlawful for a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party to receive a gift, or disposition of property originating by whatever means from a foreign source.
- (2) For the purposes of sections 306C, 306D, 306E and 306F, *foreign* means of or pertaining to a country other than Australia.

306D Forfeiture of foreign donations, gifts etc.

- (1) For the avoidance of doubt, where a foreign gift, or disposition of property is made to a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party, the foreign gift is presumed to be contrary to section 306C and is to be dealt with in accordance with subsection (2).

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

- (2) Where a person receives a foreign gift or disposition of property that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the foreign gift or disposition of property is payable by that person to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action, in a court of competent jurisdiction, against:
 - (a) in the case of a foreign gift or disposition of property to or for the benefit of a political party or a State branch of a political party:
 - (i) if the party or branch, as the case may be is a body corporate—the party or branch, as the case may be; or
 - (ii) in any other case—the agent of the party or branch, as the case may be; or

(b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

306E Donations by non-citizens resident in Australia lawful

A gift or disposition of property in Australia to a political party by a person who is a non-citizen resident in Australia is not a foreign donation for the purposes of section 306C or 306D.

Note: *non-citizen* is defined in section 5 of the *Migration Act 1958* as a person who is not an Australian citizen.

306F Donations by Australians living abroad lawful

A gift or disposition of property by a person registered on the Roll living overseas is not a foreign donation for the purposes of section 306C or 306D.

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

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Special Minister of State (Senator Abetz) the report from the committee was adopted and the bill read a third time.

37 TAXATION LAWS (CLEARING AND SETTLEMENT FACILITY SUPPORT) BILL 2003

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.

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

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

38 SUPERANNUATION LEGISLATION AMENDMENT (FAMILY LAW) BILL 2002

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

Explanatory memorandum: The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Clause 1, page 1 (line 6), after “*Family Law*”, insert “*and Other Matters*”.

Clause 2, page 2 (table item 1, cell at column 1), omit “4”, substitute “5”.

Clause 2, page 2 (at the end of the table), add:

3. Schedule 2 The day on which this Act receives the
 Royal Assent

Clause 4, page 2 (line 12), omit “amendments”, substitute “family law interest-splitting amendments”.

Page 2 (after line 23), after clause 4, insert:

5 Application of indexation amendments

The amendments made by Schedule 2 apply:

- (a) for the purpose of working out an increase in the rate of a pension benefit that is payable immediately before:
 - (i) the prescribed half-year beginning on 1 January 2004; and
 - (ii) each subsequent prescribed half-year; and
- (b) for any other purpose related to the purpose mentioned in paragraph (a).

Schedule 1, heading, page 3 (line 2), omit “**Amendments**”, substitute “**Family law superannuation splitting and other matters**”.

Schedule 1, item 3, page 6 (line 6), omit “Board”, substitute “Authority”.

Schedule 1, item 3, page 7 (lines 2 to 22), omit section 49D, substitute:

49D Operative time during growth phase—reduction of later standard pension or lump sum amount

- (1) If:
- (a) at the operative time, standard pension is not payable in respect of the original interest; and
 - (b) after the operative time, standard pension becomes payable to the member spouse in respect of the original interest;

then the annual rate of that standard pension is reduced to the amount calculated under the Orders.

Note: If the member spouse dies before becoming entitled to standard pension, then subsection (1) will nevertheless result in an indirect reduction of any widow’s pension that becomes payable. This happens because the amount of the widow’s pension is based on the amount of invalidity pay (a standard pension) that would have become payable to the member spouse at the time of death.

- (2) A reduction under subsection (1) is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under section 42 payable to a child of the member spouse after the member spouse's death.

- (3) If:
- (a) at the operative time, standard pension is not payable in respect of the original interest; and
 - (b) after the operative time, a lump sum amount becomes payable, in respect of the original interest, under section 32, 48, 48A, 56, 57 or 77;
- then that lump sum amount is reduced to the amount calculated under the Orders.

Schedule 1, page 14 (after line 26), after item 11, insert:

Parliamentary Contributory Superannuation Act 1948

11A Subsection 4(1) (at the end of the definition of *annuity*)

Add “, including an associate annuity under section 22CD or 22CE”.

11B At the end of section 4E

Add:

- (4) Reductions under Division 3 of Part VAA are to be disregarded in applying subsection (3).

11C After subsection 18(8A)

Insert:

- (8AAA) Any reduction under section 22CH is to be disregarded in applying the definition of basic rate in subsection (8A) of this section.

11D After subsection 18(8AC)

Insert:

- (8ACA) Any reduction under section 22CH is to be disregarded in applying the definition of *basic rate* in subsection (8AC) of this section.

11E After subsection 18B(15)

Insert:

- (15A) Any reduction under section 22CH is to be disregarded in applying the definition of *basic rate* in subsection (15) of this section.

11F After Part V

Insert:

Part VAA—Family law superannuation splitting

Division 1—Preliminary

22CA Definitions

In this Part, unless the contrary intention appears:

additional service factor at the operative time has the meaning given by section 22CC.

additional service factor at the payment time has the meaning given by section 22CC.

affected benefit means the affected benefit referred to in section 22CH.

applicable additional percentage means the percentage that is applied to the rate of salary, or allowance by way of salary, payable in respect of an office in order to calculate:

- (a) the annual rate of an additional retiring allowance; or
- (b) the annual rate of an annuity.

applicable basic percentage means the percentage that is applied to the rate of parliamentary allowance in order to calculate:

- (a) the annual rate of a retiring allowance (other than additional retiring allowance); or
- (b) the annual rate of an annuity.

associate annuity means an annuity under section 22CD or 22CE.

associate deferred annuity means an associate deferred annuity under section 22CE.

associate immediate annuity means an associate immediate annuity under section 22CD.

base amount means:

- (a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or
- (b) for a splitting order—the amount allocated under subsection 90MT(4) of the *Family Law Act 1975*.

basic service factor at the operative time has the meaning given by section 22CB.

basic service factor at the payment time has the meaning given by section 22CB.

family law value means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for the purposes of paragraph 90MT(2)(a) of the *Family Law Act 1975*. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the *Family Law Act 1975*.

member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-standard annuity means an annuity other than a standard allowance or annuity.

operative time, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of Part VIIIIB of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

Orders means Orders under section 22CK.

original interest means a superannuation interest to which section 22CD applies.

payment split has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

payment time, in relation to the affected benefit, means the time when the benefit becomes payable.

scheme value means the amount determined under the Orders.

Secretary means the Secretary of the Department.

section 16A amount means the total referred to in paragraph 16A(1)(c).

section 22Q amount means the employer component, or the sum of the employer components, referred to in paragraph 22Q(5)(c).

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split.

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting percentage means:

- (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the *Family Law Act 1975*; or
- (b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the *Family Law Act 1975*.

standard allowance or annuity means:

- (a) a retiring allowance; or
- (b) an annuity, other than an annuity under section 19AA.

superannuation interest has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

transfer amount means:

- (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:
 - (i) the family law value; and
 - (ii) the scheme value; or
- (b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or
- (c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

transfer factor means the number calculated by dividing the number of whole dollars in the transfer amount by the number of whole dollars in the scheme value.

22CB Basic service factor

- (1) In calculating the annual rate of the affected benefit in accordance with section 22CH, the **basic service factor at the payment time** and the **basic service factor at the operative time** are worked out under this section.

Period of service at least 8 years

- (2) If the period of service is at least 8 years, then:
- (a) the **basic service factor at the payment time** is the number calculated, by reference to the member spouse's period of service before the payment time, by adding:
- (i) for service that occurred within the first 8 years—0.0625 for each full year; and
 - (ii) for service that occurred within the next 10 years:
 - (A) 0.025 for each full year; and
 - (B) 0.025/365 for each left-over day; and
- (b) the **basic service factor at the operative time** is the number calculated, by reference to the member spouse's period of service before the operative time, by adding:
- (i) for service that occurred within the first 8 years:
 - (A) 0.0625 for each full year; and
 - (B) 0.0625/365 for each left-over day; and
 - (ii) for service that occurred within the next 10 years:
 - (A) 0.025 for each full year; and
 - (B) 0.025/365 for each left-over day.

Period of service less than 8 years—retiring allowance (not under subsection 18(2AA))

- (3) If the period of service is less than 8 years and the affected benefit is a retiring allowance (other than an allowance under subsection 18(2AA)), then:
- (a) the **basic service factor at the payment time** is 0.5; and
- (b) the **basic service factor at the operative time** is the number calculated using the formula:

$$0.5 \times \frac{\text{Days in period of service before operative time}}{\text{Days in period of service}}$$

Period of service less than 8 years—retiring allowance under paragraph 18(2AA)(b) or (c) or annuity under paragraph 19(1)(a)

- (4) If the period of service is less than 8 years and the affected benefit is a retiring allowance under paragraph 18(2AA)(b) or (c) or an annuity under paragraph 19(1)(a), then:
- (a) the **basic service factor at the payment time** is 0.5; and

- (b) the **basic service factor at the operative time** is the number calculated, by reference to the member spouse's period of service before the operative time, by adding:
- (i) 0.0625 for each full year; and
 - (ii) 0.0625/365 for each left-over day.

Period of service less than 8 years—retiring allowance under paragraph 18(2AA)(d)

- (5) If the period of service is less than 8 years and the affected benefit is a retiring allowance under paragraph 18(2AA)(d), then:
- (a) the **basic service factor at the payment time** is 0.3; and
 - (b) the **basic service factor at the operative time** is the number calculated, by reference to the member spouse's period of service before the operative time, by adding:
 - (i) 0.0375 for each full year; and
 - (ii) 0.0375/365 for each left-over day.

22CC Additional service factor

- (1) In calculating the annual rate of the affected benefit in accordance with section 22CH, the **additional service factor at the payment time** and the **additional service factor at the operative time** are worked out under this section.

Where subsection 18(10B) does not apply

- (2) If subsection 18(10B) does not apply, then:
- (a) for each office, the **additional service factor at the payment time** is the number calculated, by reference to the member spouse's period of service in the office before the payment time, by adding:
 - (i) 0.0625 for each full year; and
 - (ii) 0.0625/365 for each left-over day; and
 - (b) for each office, the **additional service factor at the operative time** is the number calculated, by reference to the member spouse's period of service in the office before the operative time, by adding:
 - (i) 0.0625 for each full year; and
 - (ii) 0.0625/365 for each left-over day.

Where paragraph 18(10B)(a) applies (one office)

- (3) If paragraph 18(10B)(a) applies, then:
- (a) the **additional service factor at the payment time** is 0.75; and
 - (b) the **additional service factor at the operative time** is:
 - (i) if the period of service in the office is at least 12 years—0.75; or
 - (ii) otherwise—the number calculated, by reference to the member spouse's period of service in the office before the operative time, by adding:
 - (A) 0.0625 for each full year; and
 - (B) 0.0625/365 for each left-over day.

Where paragraph 18(10B)(b) applies (highest-paid office)

- (4) If paragraph 18(10B)(b) applies, then:
- (a) the **additional service factor at the payment time** is 0.75; and

- (b) if, at the operative time, the member spouse is not entitled to parliamentary allowance, then the **additional service factor at the operative time** for the highest-paid office to which paragraph 18(10B)(b) applies is 0.75; and
- (c) if, at the operative time, the member spouse is entitled to parliamentary allowance, then the **additional service factor at the operative time** for the highest-paid office to which paragraph 18(10B)(b) applies is worked out as follows:
 - (i) calculate a factor under paragraph (2)(b) of this section for each office referred to in paragraph 18(10B)(b), other than an office for which the period of service began after the operative time;
 - (ii) for each such factor, calculate a weighted factor under subsection (6) of this section;
 - (iii) add together the weighted factors calculated under subparagraph (ii) of this paragraph.
- (5) If the additional service factor at the operative time, worked out under paragraph (4)(c), would be more than 0.75, then it is taken to be 0.75.
- (6) The weighted factor is calculated using the formula:

$$\text{Factor} \times \frac{\text{Salary for the office}}{\text{Salary for highest office}}$$

where:

salary for highest office means the number of whole dollars in the salary applicable at the payment time to the office referred to in paragraph 18(10B)(b) that had the highest rate of salary, or allowance by way of salary, at the payment time.

salary for the office means the number of whole dollars in the salary, or allowance by way of salary, applicable to the office at the payment time.

Division 2—Benefits for non-member spouse

22CD Associate annuity for non-member spouse

- (1) This section applies to a superannuation interest under this Act (the **original interest**) if:
 - (a) the Secretary receives a splitting agreement or splitting order in respect of the original interest; and
 - (b) the original interest is not an entitlement to an annuity under section 19AA; and
 - (c) the member spouse and the non-member spouse are both alive at the operative time; and
 - (d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.

Immediate annuity if operative time in payment phase

- (2) If, at the operative time, standard allowance or annuity is payable in respect of the original interest, then the non-member spouse is entitled to an associate immediate annuity from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

Deferred annuity if operative time in growth phase

- (3) If, at the operative time, standard allowance or annuity is not payable in respect of the original interest, then the non-member spouse is entitled to an associate deferred annuity in accordance with section 22CE.

22CE Associate deferred annuity

- (1) The associate deferred annuity is payable at an annual rate calculated under the Orders by reference to the transfer amount.
- (2) The annuity is payable from the later of:
- (a) the operative time; and
 - (b) the earliest of the following dates:
 - (i) if the Trust is satisfied that the non-member spouse has become permanently incapacitated—the date that the Trust considers to have been the date on which the person became permanently incapacitated;
 - (ii) a date notified to the Secretary under subsection (3);
 - (iii) the 65th anniversary of the non-member spouse's birth.
- (3) The non-member spouse may give a written notice to the Secretary specifying a date that is not earlier than the 55th anniversary of the non-member spouse's birth. However, the notice has no effect if section 26B would prevent the annuity being paid to the non-member spouse from the specified date.

Note: Section 26B applies the preservation requirements of the Superannuation Industry (Supervision) Regulations.

- (4) The annuity is not payable unless:
- (a) a written application has been made requesting payment of the benefit; and
 - (b) the applicant has provided any information that is necessary to determine whether the benefit is payable.
- (5) An application for payment on the ground of incapacity must be accompanied by the following:
- (a) a certificate given by a medical practitioner nominated by the Trust;
 - (b) a certificate given by a medical practitioner nominated by, or on behalf of, the non-member spouse;
 - (c) such additional information or documents as the Trust requires.
- (6) The certificates mentioned in paragraphs (5)(a) and (b) must include a statement to the effect that, in the opinion of the medical practitioner concerned, the non-member spouse is permanently incapacitated, as defined in this section.
- (7) If the non-member spouse dies before the annuity becomes payable, an amount calculated under the Orders must be paid to the legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Trust determines.

- (8) For the purposes of this section, a person is *permanently incapacitated* if, and only if, the person suffers from *permanent incapacity* within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*.

22CF Commutation of small associate annuity

- (1) If:
- (a) the annual rate of associate immediate annuity that becomes payable to the non-member spouse is less than the amount determined under the Orders; or
 - (b) the annual rate of associate deferred annuity that becomes payable to the non-member spouse is less than the amount determined under the Orders;
- then the non-member spouse may elect to commute the annuity.
- (2) The election must be made in writing to the Secretary not later than 3 months after the annuity becomes payable.
- (3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to:
- (a) if paragraph (1)(a) applies—a lump sum equal to the transfer amount; or
 - (b) if paragraph (1)(b) applies—a lump sum calculated under the Orders.

Division 3—Reduction of benefits for member spouse

22CG Operative time during growth phase—reduction of lump sum

- (1) This section applies if:
- (a) at the operative time, standard allowance or annuity is not payable in respect of the original interest; and
 - (b) the original interest is not an entitlement to an associate annuity.
- (2) The contributions in respect of the original interest are reduced, with effect from the operative time, by the amount calculated using the formula:

$$\text{Contributions at OT} \times \text{Transfer factor}$$

where:

contributions at OT means the amount of the contributions, ascertained at the operative time.

Note: Under subsections 20A(2) and 22Q(3), certain amounts are deemed to be contributions (in addition to contributions under Part IV).

- (3) Any section 16A amount in respect of the original interest is reduced, with effect from the operative time, by the amount calculated using the formula:

$$\text{Section 16A amount at OT} \times \text{Transfer factor}$$

where:

section 16A amount at OT means the section 16A amount, ascertained at the operative time.

- (4) Any section 22Q amount in respect of the original interest is reduced, with effect from the operative time, by the amount calculated using the formula:

Section 22Q amount at OT \times Transfer factor

where:

section 22Q amount at OT means the section 22Q amount, ascertained at the operative time.

22CH Operative time during growth phase—reduction of retiring allowance

- (1) This section applies if:
- at the operative time, standard allowance or annuity is not payable in respect of the original interest; and
 - after the operative time, a retiring allowance (the **affected benefit**) becomes payable to the member spouse in respect of the original interest.

Note: If the member spouse dies before becoming entitled to a retiring allowance, then subsection (1) will nevertheless result in an indirect reduction of any annuity under paragraph 19(1)(a) to a surviving spouse. This happens because the amount of that annuity is based on the amount of retiring allowance that would have become payable to the member spouse if he or she had not died.

Reduction of basic percentage

- (2) In calculating the annual rate of the affected benefit, the applicable basic percentage is replaced by the percentage calculated using the formula:

$$\left(\text{BSF at PT} - \left(\text{BSF at OT} \times \text{Transfer factor} \right) \right) \times 100$$

where:

BSF at OT means the basic service factor at the operative time.

BSF at PT means the basic service factor at the payment time.

Reduction of additional percentage

- (3) In calculating the annual rate of the affected benefit, each applicable additional percentage is replaced by the percentage calculated using the formula:

$$\left(\text{ASF at PT} - \left(\text{ASF at OT} \times \text{Transfer factor} \right) \right) \times 100$$

where:

ASF at OT means the additional service factor at the operative time for the office concerned.

ASF at PT means the additional service factor at the payment time for the office concerned.

- (4) Subsection (3) does not apply to an applicable additional percentage for an office if:
- the period of service in the office began after the operative time; and
 - paragraph 18(10B)(b) does not apply.

Multiple interest splits for same original interest

- (5) If, before the affected benefit becomes payable, the original interest has been split more than once (that is to say, section 22CD has applied more than once), then the calculations under subsections (2) and (3) are modified as set out in subsections (6) and (7).

Note: If the same superannuation interest is subject to 2 or more payment splits, then section 22CD applies separately in relation to each of those splits.

- (6) In applying the formula in subsection (2), the component (BSF at OT × Transfer factor) is to be replaced by the number calculated using the following steps, based on the chronological order of the operative times (starting with the earliest):

- (a) calculate a factor (the *interim factor*) for the first split using the formula:

$$\frac{\text{BSF at OT}}{\text{for first split}} \times \frac{\text{Transfer factor}}{\text{for first split}}$$

- (b) calculate a factor (the *interim factor*) for the next split (the *current split*), using the formula:

$$\left(\frac{\text{BSF at OT}}{\text{for current split}} - \frac{\text{Interim factor}}{\text{for previous split}} \right) \times \frac{\text{Transfer factor}}{\text{for current split}}$$

- (c) calculate a factor for each remaining split (if any), using the formula in paragraph (b);
- (d) add together the factors calculated under paragraphs (a) to (c).

Example: Assume 2 splits, with the first split having a basic service factor (BSF) of 0.4 and a transfer factor of 0.5 and the second split having a basic service factor of 0.6 and a transfer factor of 0.5. Applying the above steps, the replacement number for the formula is 0.4, that is:

$$(0.4 \times 0.5) + ((0.6 - 0.4) \times 0.5)$$

- (7) In applying the formula in subsection (3), the component (ASF at OT × Transfer factor) is to be replaced by the number calculated using the following steps, based on the chronological order of the operative times (starting with the earliest):

- (a) calculate a factor (the *interim factor*) for the first split using the formula:

$$\frac{\text{ASF at OT}}{\text{for first split}} \times \frac{\text{Transfer factor}}{\text{for first split}}$$

- (b) calculate a factor (the *interim factor*) for the next split (the *current split*), using the formula:

$$\left(\text{ASF at OT for current split} - \text{Interim factor for previous split} \right) \times \text{Transfer factor for current split}$$

- (c) calculate a factor for each remaining split (if any), using the formula in paragraph (b);
 (d) add together the factors calculated under paragraphs (a) to (c).

Reduction not to affect later non-standard annuity

- (8) A reduction under this section is to be disregarded in calculating the amount of any non-standard annuity that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of annuity payable under section 19AA in respect of a child of the member spouse after the member spouse's death.

22CI Operative time during growth phase—reduction where original interest is entitlement to associate deferred annuity

- (1) This section applies if:
 (a) at the operative time, standard allowance or annuity is not payable in respect of the original interest; and
 (b) the original interest is an entitlement to an associate deferred annuity.
 (2) The annual rate of that associate annuity (when it becomes payable) is reduced to the amount calculated under the Orders.

Note: Although an associate immediate annuity becomes payable at the operative time, an associate deferred annuity will often not become payable until some time after the operative time.

22CJ Operative time during payment phase—reduction of standard allowance or annuity

- (1) If, at the operative time, standard allowance or annuity is payable in respect of the original interest, then the annual rate of that allowance or annuity is reduced to the amount calculated under the Orders.
 (2) A reduction under subsection (1) is to be disregarded in calculating the amount of any non-standard annuity that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of annuity payable under section 19AA in respect of a child of the member spouse after the member spouse's death.

Division 4—Miscellaneous

22CK Ministerial Orders

- (1) The Minister may make Orders prescribing matters required or permitted by this Part to be prescribed.
 (2) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
 (3) An Order is taken to be a statutory rule for the purposes of the *Statutory Rules Publication Act 1903*.

Schedule 1, item 27, page 31 (line 5), after “*Family Law*”, insert “*and Other Matters*”.

Page 33 (after line 9), at the end of the bill, add:

**Schedule 2—Indexation under the Defence Forces
Retirement Benefits Act**

Defence Forces Retirement Benefits Act 1948

1 Subsection 83(1)

Insert:

first quarter, in relation to a half-year, means:

- (a) for a half-year beginning on 1 January in a year—the March quarter of the year; and
- (b) for a half-year beginning on 1 July in a year—the September quarter of the year.

2 Subsection 83(1)

Insert:

half-year means a period of 6 months beginning on 1 January or 1 July in any year.

3 Subsection 83(1)

Insert:

prescribed half-year means the half-year commencing on 1 January 2002 or a subsequent half-year.

4 Subsection 83(1) (definition of *prescribed year*)

Repeal the definition.

5 Subsection 83(2)

Omit “March quarter”, substitute “first quarter in a half-year”.

6 Subsection 84(1)

Omit “March quarter” (wherever occurring), substitute “first quarter”.

7 Subsection 84(1)

Omit “year” (wherever occurring), substitute “half-year”.

8 Subsection 84(2)

Omit “year”, substitute “half-year”.

9 Subsection 84(3)

Omit “year” (wherever occurring), substitute “half-year”.

10 Subsection 84(3)

Omit “March quarter” (wherever occurring), substitute “first quarter”.

11 Subsection 84(4)

Omit “year” (wherever occurring), substitute “half-year”.

12 Subsection 84(4)

Omit “30 June” (wherever occurring), substitute “30 June or 31 December (as the case requires)”.

13 Section 84A

Omit “year” (wherever occurring), substitute “half-year”.

14 Subsection 84B(1)

Omit “year” (wherever occurring), substitute “half-year”.

15 Subsection 84B(2)

Omit “16 June in the preceding year”, substitute “16 June or 16 December (as the case requires) in the preceding half-year”.

16 Subsection 84B(3)

Omit “16 June in the preceding year”, substitute “16 June or 16 December (as the case requires) in the preceding half-year”.

17 Subsection 84B(3)

Omit “30 June in the preceding year bears to 12”, substitute “30 June or 31 December (as the case requires) in the preceding half-year bears to 6”.

18 Subsection 84C(2)

Omit “March quarter” (wherever occurring), substitute “first quarter”.

19 Subsection 84C(2)

Omit “year” (wherever occurring), substitute “half-year”.

20 Paragraph 84C(3)(a)

Repeal the paragraph, substitute:

- (a) in relation to the prescribed half-year that commenced on 1 January 2002—the amount that was the existing amount in relation to that provision, as calculated under this section immediately before the commencement of Schedule 2 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2003*; and

21 Paragraph 84C(3)(b)

Omit “year”, substitute “half-year”.

22 Section 84D

Omit “30 June in a year”, substitute “30 June or 31 December (as the case requires) in a half-year”.

23 Subsection 84E(1)

Omit “year” (wherever occurring), substitute “half-year”.

Note: The heading to section 84E is altered by omitting “year” and substituting “half-year”.

24 Subsection 84E(2)

Repeal the subsection.

25 Subsection 84E(3)

Omit “year” (wherever occurring), substitute “half-year”.

26 Subsection 84F(2)

Omit “year” (wherever occurring), substitute “half-year”.

Note: The heading to section 84F is altered by omitting “year” and substituting “half-year”.

27 Subsection 84F(3)

Repeal the subsection.

28 Sections 84G and 84GA

Repeal the sections.

Bill, as amended, agreed to.

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

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

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

39 DAIRY PRODUCE AMENDMENT BILL 2003

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

In the committee

Consideration resumed of the bill.

Bill further debated and agreed to.

Bill to be reported without amendment.

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

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

Suspension of sitting: On the motion of Senator Troeth the sitting of the Senate was suspended till 2 pm.

At 2 pm—

40 VACANCY IN THE REPRESENTATION OF VICTORIA—CHOICE OF MITCHELL PETER FIFIELD

The President informed the Senate that he had received, through the Governor-General, from the Governor of Victoria, a facsimile copy of the certificate of the choice by the Parliament of Victoria of Mitchell Peter Fifield to fill the vacancy caused by the resignation of Senator Alston.

The President tabled the copy of the certificate as follows:

Thursday, 1st April 2004
 His Excellency Major General Michael Jeffery, AC, CVO, MC
 Governor-General of the Commonwealth of Australia
 Government House
 CANBERRA ACT 2600

Your Excellency,

I refer to the letter I received from the President of the Senate dated 10th February, 2004 advising that a vacancy had occurred in the representation of the State of Victoria in the Senate through the resignation on 10th February, 2004 of Senator the Honourable Richard Kenneth Robert Alston.

I now certify to Your Excellency that at a joint sitting of the two Houses of the Parliament of Victoria held on 31st March, 2004, pursuant to Section 15 of the Commonwealth of Australia Constitution Act, MR MITCHELL PETER FIFIELD was chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Richard Kenneth Robert Alston.

Yours sincerely
 John Landy, AC, MBE
 Governor.

Senator sworn: Senator Fifield, pursuant to the Constitution of the Commonwealth of Australia, then made and subscribed the oath of allegiance at the table.

41 QUESTIONS

Questions without notice were answered.

42 UNPARLIAMENTARY LANGUAGE—STATEMENT BY PRESIDENT

The President made a statement relating to unparliamentary language and a matter raised by the Minister for Local Government, Territories and Roads (Senator Ian Campbell) on 31 March 2004.

43 DEFENCE—INTELLIGENCE BRIEFING—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) to questions without notice asked by Senators Evans and Ray today relating to the briefing of the Leader of the Opposition (Mr Latham) on intelligence matters.

Debate ensued.

Question put and passed.

44 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—PRESIDING OFFICERS' RESPONSE—AUSTRALIA'S RELATIONS WITH PAPUA NEW GUINEA AND THE ISLAND STATES OF THE SOUTH-WEST PACIFIC

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

Foreign Affairs, Defence and Trade References Committee—Report—Australia's relations with Papua New Guinea and the island states of the south-west Pacific—Presiding Officers' response, dated 1 April 2004.

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

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

45 ENVIRONMENT—GENETICALLY-MODIFIED ORGANISMS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

The Minister for Justice and Customs (Senator Ellison), by leave, made a statement relating to the order of the Senate of 30 March 2004 for the production of documents relating to Commonwealth Scientific and Industrial Research Organisation (CSIRO) programs and, pursuant to that order, tabled the following documents:

- Environment—Genetically-modified organisms—
 - Copies of published outputs from CSIRO programs—
 - Ecological implications of GMO [6].
 - Path to adoption—Other relevant publications [4].
 - Pathfinder studies—
 - Near-market agricultural plant GMO [11].
 - Potential GMO of contrasting ecological impact [5].
- List of tabled documents.

46 DOCUMENTS

The following documents were tabled by the Clerk:

- Agricultural and Veterinary Chemicals Code Act—Order—Statutory Rules 2004 No. 55.
- Family Law Act—Rules of Court—Statutory Rules 2004 No. 53.

47 TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

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

Question—That the bill be agreed to—divided in respect of Schedule 1, items 5 to 9.
Schedule 1, items 5 to 9 debated.

Question—That Schedule 1, items 5 to 9 stand as printed—put and negatived.

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

Schedule 1, item 10, page 4 (line 26), omit “listens to, records, reads or views”, substitute “listens to or records”.

Schedule 1, item 10, page 4 (line 28), omit “listening, recording, reading or viewing”, substitute “listening or recording”.

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

Schedule 1, item 10, page 5 (line 1) to page 6 (line 9), omit subsections (5), (6) and (7).

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 11.

Schedule 1, item 11 debated.

Question—That Schedule 1, item 11 stand as printed—put and negatived.

Senator Greig moved the following amendment:

Schedule 1, page 6 (after line 29), after item 15, insert:

15A After section 17

Insert:

17A Annual report by Minister about warrants

- (1) The Minister shall, as soon as practicable after each 30 June, cause to be prepared a written report that relates to the year ending on that 30 June and complies with section 17B.
- (2) The Minister must table a copy of a report under subsection (1) before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

17B Report to contain information about requests made and warrants issued

The report required in accordance with section 17A shall set out:

- (a) the number of requests for warrants that the Organisation has made pursuant to section 9 during that year; and
- (b) the number of warrants that the Minister has issued pursuant to section 9 during that year; and
- (c) the number of requests for warrants that the Organisation has made pursuant to section 9A during that year; and
- (d) the number of warrants that the Minister has issued pursuant to section 9A during that year; and
- (e) the number of requests for further warrants that the Organisation has made pursuant to subsection 9B(4) during that year; and
- (f) the number of further warrants that the Minister has issued pursuant to subsection 9B(4) during that year; and
- (g) the number of warrants issued by the Director-General of Security pursuant to section 10 during that year; and
- (h) the number of requests for warrants that the Organisation has made pursuant to section 11A during that year; and
- (i) the number of warrants that the Minister has issued pursuant to section 11A during that year; and
- (j) the number of requests for warrants that the Organisation has made pursuant to section 11B during that year; and

- (k) the number of warrants that the Minister has issued pursuant to section 11B during that year; and
- (l) the number of requests for warrants that the Organisation has made pursuant to section 11C during that year; and
- (m) the number of warrants that the Minister has issued pursuant to section 11C during that year; and
- (n) the number of requests for further warrants that the Organisation has made pursuant to subsection 11D(4) during that year; and
- (o) the total expenditure (including expenditure of a capital nature) incurred by the Organisation in connection with the execution of warrants during the year to which the report relates.

Debate ensued.

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

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

**48 AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL
(NO. 2) 2003**

Order of the day read for the consideration of message no. 549 from the House of Representatives in committee of the whole (*see entry no. 34, 31 March 2004*).

In the committee

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

- (1) Schedule 1, items 156 to 158, page 34 (lines 3 to 16), omit the items.
 - (2) Schedule 1, item 162, page 35 (line 19), omit paragraph (c).
 - (3) Schedule 1, item 164, page 35 (line 29), omit paragraph (c).
 - (4) Schedule 1, item 168, page 36 (line 17) to page 37 (line 17), omit the item.
 - (5) Schedule 1, items 171 to 178, page 37 (line 28) to page 39 (line 12), omit the items.
-

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

(1) Clause 2, page 2 (table item 5), omit the table item, substitute:

5. Schedule 1, Part 2	The day after the day on which this Act receives the Royal Assent.
5A. Schedule 1, item 156	The day after the day on which this Act receives the Royal Assent. However, the provision(s) do not commence at all if item 2 of Schedule 2 to the <i>Australian Federal Police and Other Legislation Amendment Act 2003</i> commences before, or on the same day as, the day on which this Act receives the Royal Assent.
5B. Schedule 1, item 157	The later of: (a) the time immediately after the time that the provision(s) covered by table item 5A commence; and (b) the commencement of item 2 of Schedule 2 to the <i>Australian Federal Police and Other Legislation Amendment Act 2003</i> .
5C. Schedule 1, items 159 to 170	The day after the day on which this Act receives the Royal Assent.

(2) Schedule 1, item 156, page 34 (lines 3 to 6), omit the item, substitute:

156 Subsection 5(1)

Insert:

protective service officer means a protective service officer within the meaning of the *Australian Protective Service Act 1987*.

(3) Schedule 1, item 157, page 34 (lines 7 to 10), omit the item, substitute:

157 Subsection 5(1) (definition of *protective service officer*)

Repeal the definition, substitute:

protective service officer means a protective service officer within the meaning of the *Australian Federal Police Act 1979*.

(4) Schedule 1, item 158, page 34 (lines 11 to 16), omit the item.

(5) Schedule 1, item 160, page 34 (line 25), after “authority of a State or Territory”, insert “(including a member of the police force or police service of a State or Territory)”.

(6) Schedule 1, item 162, page 35 (line 19), omit paragraph (c), substitute:

- (c) a police officer; or
- (d) a protective service officer; or
- (e) an employee of a body corporate established or continued in existence for a public purpose by or under a Commonwealth law.

(7) Schedule 1, item 164, page 35 (line 29), omit paragraph (c), substitute:

- (c) a police officer; or

- (ca) a protective service officer; or
- (cb) an employee of a body corporate established or continued in existence for a public purpose by or under a Commonwealth law;
- (8) Schedule 1, item 166, page 36 (after line 10), after paragraph (b), insert:
 - or (c) a police officer; or
 - (d) a protective service officer; or
 - (e) an employee of a body corporate established or continued in existence for a public purpose by or under a Commonwealth law;
- (9) Schedule 1, item 168, page 36 (line 17) to page 37 (line 17), omit the item.
- (10) Schedule 1, items 171 to 178, page 37 (line 28) to page 39 (line 12), omit the items.

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 and agrees to the amendments made by the House in place of those amendments.

Senator Forshaw moved the following amendment:

At the end of the motion, add “with the following amendments:

Amendment (6), at the end of paragraph (e), add ‘, if the body corporate is prescribed for the purposes of this paragraph’.

Amendment (7), at the end of paragraph (cb), add ‘, if the body corporate is prescribed for the purposes of this paragraph’.

Amendment (8), at the end of paragraph (e), add ‘, if the body corporate is prescribed for the purposes of this paragraph’.”.

Debate ensued.

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

Main question, as amended, put and passed.

Resolution to be reported.

The Acting Deputy President (Senator Chapman) resumed the chair and the Temporary Chair of Committees reported that the committee had considered message no. 549 from the House of Representatives relating to the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2003 and had resolved not to insist on the amendments made by the Senate to which the House had disagreed and had agreed to the amendments made by the House in place of those amendments, with amendments.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the report from the committee was adopted.

49 COMMUNICATIONS LEGISLATION AMENDMENT BILL (NO. 2) 2003

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

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

Schedule 1, item 1 debated.

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

Explanatory memorandum: The Minister for the Arts and Sport (Senator Kemp) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Schedule 1, item 4, page 3 (line 27) to page 4 (line 16), omit subsections (2) to (4), substitute:

- (2) Within 14 days after receiving the assessment, the Attorney-General must give to the assessed person a notice in writing, to which a copy of the assessment is attached, informing the assessed person of the making of the assessment and containing information, in the form prescribed for the purposes of subsection 38(1), concerning his or her right to apply to the Tribunal under this Part.
- (3) If the Attorney-General is satisfied that the assessment contains any matter the disclosure of which would be prejudicial to the interests of security, then the Attorney-General must exclude that matter from the copy provided under subsection (2).

Schedule 1, item 27, page 15 (lines 19 and 20), omit “, either generally or to a particular person or particular persons”.

Schedule 1, item 27, page 15 (after line 20), after subsection (3), insert:

- (3A) A direction under subsection (3) must relate to a carriage service generally and cannot be expressed to apply to the supply of a carriage service to a particular person, particular persons or a particular class of persons.

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

Schedule 1, item 10, page 6 (lines 17 to 21), omit subsection (1), substitute:

- (1) Subject to subsection (1A), the Attorney-General may give a written direction to the ACA not to grant a carrier licence to a particular person.
- (1A) The Attorney-General may only give a written direction under subsection (1) if:
 - (a) the Attorney-General has consulted with the Prime Minister and the Minister administering this Act; and

- (b) there are demonstrated grounds to show that this is necessary to protect national security; and
- (c) the Attorney-General believes on reasonable grounds that the risk to national security cannot be managed effectively through other mechanisms.

Schedule 1, item 27, page 15 (lines 12 to 15), omit paragraph (b), substitute:

- (b) the Attorney-General has consulted with the Prime Minister and the Minister administering this Act; and
- (c) there are demonstrated grounds to show that the proposed use or supply involves, or would involve, a risk to national security; and
- (d) the Attorney-General believes on reasonable grounds that the risk to national security cannot be managed effectively through other mechanisms;

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

Schedule 1, item 10, page 6 (after line 32), after subsection (4), insert:

- (4A) Nothing in this section limits the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as a risk to national security, and the power of the Attorney-General to issue a written direction under subsection (1) shall be construed accordingly.

Schedule 1, item 27, page 15 (after line 22), after subsection (4), insert:

- (4A) Nothing in this section limits the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as a risk to national security, and the power of the Attorney-General to issue a written direction under subsection (3) shall be construed accordingly.

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

Schedule 1, item 27, page 15 (after line 22), after subsection (4), insert:

- (4B) A carrier or carriage service provider to which a written direction has been given under subsection (3) is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with the request.
- (4C) An officer, employee or agent of a carrier or carriage service provider to which a written direction has been given under subsection (3) is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the provider as mentioned in subsection (4B).

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, items 17 and 18.

Schedule 1, items 17 and 18 debated.

Question—That Schedule 1, items 17 and 18 stand as printed—put and negatived.

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

Page 1 (after line 9), after clause 2, insert:

2A Review of operation etc. of this Act

- (1) Within 4 years of the day on which this Act receives the Royal Assent, the Minister, in consultation with the Attorney-General, must:
 - (a) cause a review to be conducted to assess the operation, effectiveness and implications of amendments made by this Act; and
 - (b) prepare a written report on the review.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the report is made.

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

4 Cessation of operation of Act

This Act, unless sooner repealed, ceases to be in force at the end of 5 years after the Royal Assent.

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 Kirk) reported accordingly.

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

**50 MILITARY REHABILITATION AND COMPENSATION BILL 2003
MILITARY REHABILITATION AND COMPENSATION (CONSEQUENTIAL AND
TRANSITIONAL PROVISIONS) BILL 2003**

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

Message no. 558, dated 1 April 2004—Military Rehabilitation and Compensation Bill 2003.

Message no. 559, dated 1 April 2004—Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003.

51 MIGRATION LEGISLATION AMENDMENT BILL (NO. 1) 2002

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

Message no. 561, dated 1 April 2004—Migration Legislation Amendment Bill (No. 1) 2002.

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

52 FAMILY ASSISTANCE LEGISLATION AMENDMENT (EXTENSION OF TIME LIMITS)

BILL 2003

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

Message no. 560, dated 1 April 2004—Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003.

Ordered, on the motion of the Minister for the Arts and Sport (Senator Kemp), that the message be considered in committee of the whole immediately.

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

In the committee

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

Question put and passed.

Resolution to be reported.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Kirk) reported that the committee had considered message no. 560 from the House of Representatives relating to the Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003 and had resolved not to insist on the amendments made by the Senate to which the House had disagreed.

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

53 ORDER OF BUSINESS—REARRANGEMENT

The Minister for the Arts and Sport (Senator Kemp) moved—That intervening business be postponed till after consideration of general business order of the day no. 71 (Kyoto Protocol Ratification Bill 2003 [No. 2]).

Question put and passed.

54 KYOTO PROTOCOL RATIFICATION BILL 2003 [NO. 2]

Order of the day read for the adjourned debate on the motion of Senator Lundy—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

On the motion of Senator Brown the bill was read a third time.

55 APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (NO. 2) 2003-2004**APPROPRIATION BILL (NO. 3) 2003-2004****APPROPRIATION BILL (NO. 4) 2003-2004**

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

Debate resumed.

Question put and passed.

Bills read a second time.

No amendments or requests for amendments to the bills were circulated and they were not considered in committee.

On the motion of the Minister for the Arts and Sport (Senator Kemp) the bills were read a third time.

56 ADVANCE TO THE FINANCE MINISTER—2002-03

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

In the committee

The Minister for the Arts and Sport (Senator Kemp) moved—That the committee approves the statement of Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2003.

Question put and passed.

Resolution to be reported.

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

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

57 COMMITTEES—CHANGES IN MEMBERSHIP

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

The Minister for the Arts and Sport (Senator Kemp), by leave, moved—That senators be discharged from and appointed to committees as follows:

Economics Legislation Committee—

Appointed—Substitute member: Senator Ridgeway to replace Senator Murray for the committee's inquiry into the provisions of the Tourism Australia Bill 2004

Employment, Workplace Relations and Education Legislation Committee—

Appointed—

Participating member: Senator Carr on 15 April and 16 April 2004

Substitute member: Senator Marshall to replace Senator Carr on 15 April and 16 April 2004

Lindeberg Grievance—Select Committee—

Appointed—Senators Bartlett, Eggleston, Harris, Kirk, Moore, Santoro and Watson

Public Accounts and Audit—Joint Statutory Committee—

Appointed—Senator Moore

Discharged—Senator Lundy.

Question put and passed.

58 NOTICES OF MOTION WITHDRAWN

The Minister for the Arts and Sport (Senator Kemp), at the request of the respective senators, withdrew the following general business notices of motion:

78, 112, 569, 604, 646, 671, 708, 721, 740, 748, 770, 774 and 818.

59 COMMUNICATIONS LEGISLATION AMENDMENT BILL (NO. 2) 2003

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

Message no. 567, dated 1 April 2004—Communications Legislation Amendment Bill (No. 2) 2003, agreeing to amendments nos 4, 10 and 11 made by the Senate and disagreeing to amendments nos 1 to 3, 5 to 9, 12 and 13.

Ordered, on the motion of the Minister for the Arts and Sport (Senator Kemp), that the message be considered in committee of the whole immediately.

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

In the committee

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

(1) Opp (1) [Sheet 3219]

Page 1 (after line 9), after clause 2, insert:

2A Review of operation etc. of this Act

- (1) Within 4 years of the day on which this Act receives the Royal Assent, the Minister, in consultation with the Attorney-General, must:
 - (a) cause a review to be conducted to assess the operation, effectiveness and implications of amendments made by this Act; and
 - (b) prepare a written report on the review.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the report is made.

(2) Opp (2) [Sheet 3219]

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

4 Cessation of operation of Act

This Act, unless sooner repealed, ceases to be in force at the end of 5 years after the Royal Assent.

(3) Dem (1) [Sheet 4212]

Schedule 1, item 1, page 3 (lines 4 to 8), omit the item.

(5) Dem (2) [Sheet 4212]

Schedule 1, item 10, page 6 (lines 17 to 21), omit subsection (1), substitute:

- (1) Subject to subsection (1A), the Attorney-General may give a written direction to the ACA not to grant a carrier licence to a particular person.
- (1A) The Attorney-General may only give a written direction under subsection (1) if:
- (a) the Attorney-General has consulted with the Prime Minister and the Minister administering this Act; and
 - (b) there are demonstrated grounds to show that this is necessary to protect national security; and
 - (c) the Attorney-General believes on reasonable grounds that the risk to national security cannot be managed effectively through other mechanisms.
- (6) Dem (3) [Sheet 4212]**
Schedule 1, item 10, page 6 (after line 32), after subsection (4), insert:
- (4A) Nothing in this section limits the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as a risk to national security, and the power of the Attorney-General to issue a written direction under subsection (1) shall be construed accordingly.
- (7) Opp (3) [Sheet 3219]**
Schedule 1, item 17, page 10 (lines 17 to 20), omit the item.
- (8) Opp (4) [Sheet 3219]**
Schedule 1, item 18, page 10 (line 21) to page 12 (line 17), omit the item.
- (9) Dem (4) [Sheet 4212]**
Schedule 1, item 27, page 15 (lines 12 to 15), omit paragraph (b), substitute:
- (b) the Attorney-General has consulted with the Prime Minister and the Minister administering this Act; and
 - (c) there are demonstrated grounds to show that the proposed use or supply involves, or would involve, a risk to national security; and
 - (d) the Attorney-General believes on reasonable grounds that the risk to national security cannot be managed effectively through other mechanisms;
- (12) Dem (5) [Sheet 4212]**
Schedule 1, item 27, page 15 (after line 22), after subsection (4), insert:
- (4A) Nothing in this section limits the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as a risk to national security, and the power of the Attorney-General to issue a written direction under subsection (3) shall be construed accordingly.
- (13) Dem (6) [Sheet 4212]**
Schedule 1, item 27, page 15 (after line 22), after subsection (4), insert:
- (4B) A carrier or carriage service provider to which a written direction has been given under subsection (3) is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with the request.

- (4C) An officer, employee or agent of a carrier or carriage service provider to which a written direction has been given under subsection (3) is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the provider as mentioned in subsection (4B).

Senator Kemp moved—That the committee does not insist on its amendments nos 1 to 3, 5 to 9, 12 and 13 to which the House of Representatives has disagreed.

Debate ensued.

Question put and passed.

Resolution to be reported.

The Acting Deputy President (Senator Marshall) resumed the chair and the Chair of Committees (Senator Hogg) reported that the committee had considered message no. 567 from the House of Representatives relating to the Communications Legislation Amendment Bill (No. 2) 2003 and had resolved not to insist on amendments nos 1 to 3, 5 to 9, 12 and 13 made by the Senate to which the House had disagreed.

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

60 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 8.21 pm till Tuesday, 11 May 2004 at 12.30 pm.

61 ATTENDANCE

Present, all senators except Senators Cherry, Johnston*, Sherry, Stott Despoja* and Webber* (* on leave).

HARRY EVANS
Clerk of the Senate