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1 MEETING OF SENATE

The Senate met at 9 am. The President (Senator the Honourable Paul Calvert) took the chair and read prayers.

2 NOTICES

The Minister for Local Government, Territories and Roads (Senator Ian Campbell): To move on the next day of sitting—

- (1) That so much of the standing orders be suspended as would prevent the succeeding provisions of this resolution having effect.
- (2) That the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003 be recommitted, and that consideration of the bill in committee of the whole be an order of the day for a later hour.
- (3) That the committee consider the bill as reported by the committee of the whole on 3 March 2004.

The President: To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Parliamentary Service Act 1999*, and for related purposes. **Parliamentary Service Amendment Bill 2004**. (*general business notice of motion no. 906*)

The Leader of the Opposition in the Senate (Senator Faulkner): To move on the next day of sitting—That the Senate censures the Minister for Defence (Senator Hill) for his failure to:

- (a) take seriously and respond adequately to the reports of abuse of Iraqi prisoners by United States of America personnel;
- (b) acknowledge Australia's legal and moral obligations to Iraqi prisoners in general and those captured by Australian forces in particular;
- (c) take his accountability responsibilities seriously; and
- (d) correct the serious communications problems within Defence and between Defence and his office, which were revealed by the 'Children Overboard' affair. (*general business notice of motion no. 907*)

Senator Brown: To move on 22 June 2004—That the Senate censures the Minister for Defence (Senator Hill) for his failure to respond to Amnesty International reports from Iraq in June and July 2003. (*general business notice of motion no. 908*)

3 TAX LAWS AMENDMENT (2004 MEASURES NO. 1) BILL 2004

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

Message no. 606, dated 17 June 2004—Tax Laws Amendment (2004 Measures No. 1) Bill 2004.

4 NEW INTERNATIONAL TAX ARRANGEMENTS (PARTICIPATION EXEMPTION AND OTHER MEASURES) BILL 2004 MARRIAGE LEGISLATION AMENDMENT BILL 2004

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

Message no. 605, dated 17 June 2004—A Bill for an Act to amend the law relating to taxation, and for related purposes.

Message no. 607, dated 17 June 2004—A Bill for an Act to amend the *Marriage Act 1961* and the *Family Law Act 1975*, and for related purposes.

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

Question put and passed.

Bills read a first time.

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

Explanatory memorandum: Senator Minchin tabled a revised explanatory memorandum relating to the New International Tax Arrangements (Participation Exemption and Other Measures) Bill 2004.

On the motion of Senator Mackay the debate was adjourned.

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

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

Question put and passed.

5 **PARLIAMENTARY SUPERANNUATION AND OTHER ENTITLEMENTS LEGISLATION AMENDMENT BILL 2004**

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

Message no. 608, dated 17 June 2004—Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004.

Ordered, on the motion of the Minister for Finance and Administration (Senator Minchin), 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 Minchin moved—That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Debate ensued.

Question put.

The committee divided—

AYES, 49

Senators—

Abetz	Eggleston (Teller)	Kirk	Ray
Barnett	Ellison	Knowles	Santoro
Bishop	Evans	Ludwig	Scullion
Boswell	Ferguson	Lundy	Sherry
Brandis	Fifield	Mackay	Stephens
Buckland	Forshaw	Marshall	Tchen
Calvert	Harris	Mason	Troeth
Campbell, George	Heffernan	McGauran	Watson
Campbell, Ian	Hogg	McLucas	Webber
Chapman	Humphries	Minchin	Wong
Colbeck	Hutchins	Moore	
Cook	Johnston	Murphy	
Crossin	Kemp	Payne	

NOES, 6

Senators—

Allison (Teller)	Cherry	Murray	Nettle
Brown	Greig		

Question agreed to.

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. 608 from the House of Representatives relating to the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004 and had resolved not to insist on the amendments made by the Senate to which the House had disagreed.

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

6 **ANTI-TERRORISM BILL 2004**

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, as amended—and of the amendments moved by the Minister for Justice and Customs (Senator Ellison):

Schedule 1, item 5, page 6 (line 8), after “section”, insert “23CB.”.

Schedule 1, item 5, page 6 (lines 21 to 26), omit paragraph (m), substitute:

(m) any reasonable time that:

- (i) is a time during which the questioning of the person is reasonably suspended or delayed; and
- (ii) is within a period specified under section 23CB.

Schedule 1, item 5, page 6 (after line 38), after section 23CA, insert:

23CB Specifying time during which suspension or delay of questioning may be disregarded

- (1) This section applies if the person mentioned in paragraph 23CA(8)(m) is detained under subsection 23CA(2) for the purpose of investigating whether the person committed a terrorism offence.

Note: The person may be detained under subsection 23CA(2) for the purpose of investigating whether the person committed a terrorism offence, whether the person was arrested for that terrorism offence or a different terrorism offence.

Application for specification of period

- (2) At or before the end of the investigation period, an investigating official may apply for a period to be specified for the purpose of subparagraph 23CA(8)(m)(ii).
- (3) The application must be made to:
- (a) a magistrate; or
 - (b) if it cannot be made at a time when a magistrate is available—a justice of the peace employed in a court of a State or Territory or a bail justice; or
 - (c) if it cannot be made when any of the foregoing is available—any justice of the peace.
- (4) The application may be made:
- (a) in person before the magistrate, justice of the peace or bail justice; or
 - (b) in writing; or
 - (c) by telephone, telex, fax or other electronic means.

However, before making the application by means described in paragraph (c), the investigating official must inform the person that the person, or his or her legal representative, may make representations to the magistrate, justice of the peace or bail justice about the application.

- (5) The application must include statements of all of the following:
- (a) whether it appears to the investigating official that the person is under 18;
 - (b) whether it appears to the investigating official that the person is an Aboriginal person or a Torres Strait Islander;
 - (c) the reasons why the investigating official believes the period should be specified, which may, for example, be or include one or more of the following:
 - (i) the need to collate and analyse information relevant to the investigation from sources other than the questioning of the person (including, for example, information obtained from a place outside Australia);
 - (ii) the need to allow authorities in or outside Australia (other than authorities in an organisation of which the investigating official is part) time to collect information relevant to the investigation on the request of the investigating official;
 - (iii) the fact that the investigating official has requested the collection of information relevant to the investigation from a place outside Australia that is in a time zone different from the investigating official's time zone;

- (iv) the fact that translation is necessary to allow the investigating official to seek information from a place outside Australia and/or be provided with such information in a language that the official can readily understand;
 - (d) the period that the investigating official believes should be specified.
- (6) The person, or his or her legal representative, may make representations about the application.

Decision about specifying period

- (7) The magistrate, justice of the peace or bail justice may, by signed instrument, specify a period starting at the time the instrument is signed, if satisfied that:
- (a) it is appropriate to do so, having regard to:
 - (i) the application; and
 - (ii) the representations (if any) made by the person, or his or her legal representative, about the application; and
 - (iii) any other relevant matters; and
 - (b) the offence is a terrorism offence; and
 - (c) detention of the person is necessary to preserve or obtain evidence or to complete the investigation into the offence or into another terrorism offence; and
 - (d) the investigation into the offence is being conducted properly and without delay; and
 - (e) the person, or his or her legal representative, has been given the opportunity to make representations about the application.

Instrument specifying period

- (8) The instrument must:
- (a) specify the period as a number (which may be less than one) of hours; and
 - (b) set out the day and time when it was signed; and
 - (c) set out the reasons for specifying the period.
- (9) The magistrate, justice of the peace or bail justice must:
- (a) give the investigating official a copy of the instrument as soon as practicable after signing it; and
 - (b) if the instrument was made as a result of an application made by means described in paragraph (4)(c)—inform the investigating official of the matters included in the instrument.

Evidentiary provisions if application was made by telephone, fax etc.

- (10) As soon as practicable after being informed of those matters, the investigating official must:
- (a) complete a form of the instrument and write on it the name of the magistrate, justice of the peace or bail justice and the particulars given by him or her; and
 - (b) forward it to the magistrate, justice of the peace or bail justice.

- (11) If the form of the instrument completed by the investigating official does not, in all material respects, accord with the terms of the instrument signed by the magistrate, justice of the peace or bail justice, the specification of the period is taken to have had no effect.
- (12) In any proceedings, if the instrument signed by the magistrate, justice of the peace or bail justice is not produced in evidence, the burden lies on the prosecution to prove that the period was specified.

Debate resumed.

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

Senator Brown moved the following amendments together by leave:

Schedule 1, page 8 (after line 12), after item 7, insert:

7A After section 23DA

Insert:

23DAA Oversighting report to be tabled by Ombudsman

- (1) Within 2 weeks after the end of each quarter:
 - (a) the AFP Commissioner; and
 - (b) where a State or Territory Commissioner of Police exercises power under this Act, that State or Territory Commissioner of Police;

must give to the Ombudsman a copy of every authority extending the interrogation period issued during the quarter pursuant to section 23DA.

- (2) The Ombudsman may require a Commissioner listed in subsection (1) to furnish such information about an authority issued pursuant to section 23DA as is necessary for the Ombudsman's proper consideration of it.

Schedule 1, page 8 (after line 12), after item 7, insert:

7B After section 23DA

Insert:

23DAB Requirement for Ombudsman to inspect records of AFP

- (1) The Ombudsman:
 - (a) must inspect the records of the Australian Federal Police in relation to extensions of interrogation periods at least once every 12 months; and
 - (b) may inspect the records of the Australian Federal Police at any time, for the purpose of ascertaining whether the requirements of this section are being complied with.
- (2) Nothing in this section requires the Ombudsman to inspect records in relation to an extension of an interrogation period that has not been completed.

Schedule 1, page 8 (after line 12), after item 7, insert:

7C After section 23DA

Insert:

23DAC Oversighting report to be tabled by Ombudsman

- (1) The Ombudsman must, as soon as practicable after 30 June each year, prepare a report on:
- (a) whether the AFP and State and Territory police practices and guidelines relating to the extension of interrogation and detention periods during the preceding 12 months comply with the International Covenant on Civil and Political Rights; and
 - (b) detail any exceptions to compliance with the International Covenant on Civil and Political Rights.
- The report required by this section must be prepared in consultation with the Human Rights and Equal Opportunity Commission.
- (2) The report prepared in accordance with this section is to be given to the President of the Senate and the Speaker of the House of Representatives for presentation to the Senate and the House of Representatives respectively.

Debate ensued.

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

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

Schedule 1, item 15, page 9 (line 20), after “paragraph (b)”, insert “, (c), (d) or (e)”.

Schedule 1, item 15, page 9 (after line 22), after subsection (7), insert:

- (8) Before the Governor-General makes a regulation prescribing an organisation for the purposes of paragraph (7)(a), the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering:
- (a) a serious violation of human rights; or
 - (b) armed hostilities against the Commonwealth or a foreign State allied or associated with the Commonwealth; or
 - (c) a terrorist act (as defined in section 100.1 of the *Criminal Code*); or
 - (d) an act prejudicial to the security, defence or international relations of the Commonwealth.

Senator Nettle moved the following amendments together by leave:

Schedule 1, item 21, page 11 (lines 9 to 12), omit paragraph (d), substitute:

- (d) where a person has been convicted of an *indictable offence or a *foreign indictable offence, and there are reasonable grounds to suspect that the person has derived *literary proceeds in relation to the offence; and

Schedule 1, page 11 (after line 16), after item 22, insert:

22AA After section 20

Insert:

20AA Return of forfeiture when conviction quashed

Where a person has forfeited *literary proceeds in relation to an offence in accordance with this Act and the conviction of the person is quashed, the literary proceeds must be returned to the person.

Schedule 1, item 24, page 11 (lines 19 and 20), omit the item, substitute:

24 Paragraph 153(1)(a)

Omit “from the person committing”, substitute “directly from the person being convicted of”.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 8

Senators—

Allison (Teller)	Cherry	Lees	Murray
Brown	Greig	Murphy	Nettle

NOES, 36

Senators—

Barnett	Cook	Kirk	Payne
Bishop	Crossin	Ludwig	Santoro
Brandis	Eggleston (Teller)	Lundy	Scullion
Buckland	Ellison	Mackay	Stephens
Campbell, George	Ferguson	Marshall	Tchen
Campbell, Ian	Fifield	Mason	Troeth
Carr	Hogg	McGauran	Watson
Chapman	Hutchins	Moore	Webber
Colbeck	Johnston	O'Brien	Wong

Question negatived.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 24.

Schedule 1, item 24 debated.

Question—That Schedule 1, item 24 stand as printed—put and negatived.

Senator Brown moved the following amendment:

Schedule 1, page 11 (after line 16), after item 22, insert:

22A After section 20

Insert:

20A Public interest disclosure permitted

- (1) For the avoidance of doubt, where a person has been charged or convicted of an *indictable offence or a *foreign indictable offence the person is, in the absence of deriving any literary proceeds in relation to the offence, permitted to make information relating to their involvement in the offence public.
- (2) A court must not make a restraining order in accordance with paragraph 20(1)(d) in the circumstances described in subsection (1).

Debate ensued.

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

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

Schedule 1, item 26, page 12 (line 40) to page 13 (line 6), omit subsection 337A(3).

Suspension of sitting: On the motion of Senator Ellison the sitting of the Senate was suspended till 12.35 pm.

—————
At 12.35 pm—

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 26, as amended.

Schedule 1, item 26, as amended, debated.

Senator Brown moved—That the committee report progress and ask leave to sit again.

Question put and negatived.

Schedule 1, item 26, as amended, further debated.

Senator Brown moved—That the committee report progress and ask leave to sit again.

Question put.

The committee divided—

AYES, 7

Senators—

Allison (Teller)	Brown	Lees	Nettle
Bartlett	Greig	Murray	

NOES, 46

Senators—

Abetz	Crossin	Johnston	Payne
Barnett	Eggleston (Teller)	Kirk	Ray
Bishop	Ellison	Knowles	Santoro
Boswell	Evans	Ludwig	Scullion
Brandis	Ferguson	Lundy	Sherry
Buckland	Fifield	Mackay	Stephens
Calvert	Forshaw	Marshall	Tchen
Campbell, George	Heffernan	Mason	Troeth
Campbell, Ian	Hill	McGauran	Watson
Chapman	Hogg	McLucas	Webber
Colbeck	Humphries	Moore	
Cook	Hutchins	O'Brien	

Question negatived.

Question—That Schedule 1, item 26, as amended, be agreed to—put.

The committee divided—

AYES, 44

Senators—

Abetz	Cook	Johnston	O'Brien
Barnett	Crossin	Kemp	Payne
Bishop	Eggleston (Teller)	Kirk	Ray
Boswell	Ellison	Knowles	Santoro
Brandis	Ferguson	Ludwig	Scullion
Buckland	Fifield	Lundy	Sherry
Calvert	Forshaw	Mackay	Stephens
Campbell, George	Heffernan	Marshall	Tchen
Campbell, Ian	Hogg	McGauran	Troeth
Carr	Humphries	McLucas	Watson
Colbeck	Hutchins	Moore	Webber

NOES, 6

Senators—			
Allison (Teller)	Brown	Murray	Nettle
Bartlett	Greig		

Item agreed to.

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.

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

Question put.

The Senate divided—

AYES, 43

Senators—			
Abetz	Crossin	Kemp	Payne
Barnett	Eggleston (Teller)	Kirk	Ray
Bishop	Ellison	Knowles	Santoro
Boswell	Ferguson	Ludwig	Scullion
Brandis	Fifield	Lundy	Sherry
Buckland	Forshaw	Mackay	Stephens
Calvert	Heffernan	Marshall	Tchen
Campbell, George	Hogg	McGauran	Troeth
Carr	Humphries	McLucas	Watson
Colbeck	Hutchins	Moore	Webber
Cook	Johnston	O'Brien	

NOES, 6

Senators—			
Allison (Teller)	Brown	Murray	Nettle
Bartlett	Greig		

Question agreed to.

Bill read a third time.

7 TOURISM AUSTRALIA BILL 2004

TOURISM AUSTRALIA (REPEAL AND TRANSITIONAL PROVISIONS) 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 these bills be now read a second time.

Debate resumed.

Question put and passed.

Bills read a second time.

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

In the committee

TOURISM AUSTRALIA BILL 2004—

Bill taken as a whole by leave.

Senator O'Brien moved the following amendments together by leave:

No. 1—Clause 12, page 8 (line 23), omit “4”, substitute “5”.

No. 2—Clause 14, page 9 (line 24), at the end of subclause (1), add:
; (n) Australian indigenous tourism or culture.

Senator Allison moved the following amendment to Senator O'Brien's proposed amendment no. 1:

Omit “5”, substitute “6”.

Debate ensued.

Question—That Senator Allison's amendment to Senator O'Brien's proposed amendment no. 1 be agreed to—put and passed.

Question—That amendment no. 1, as amended, and amendment no. 2 be agreed to—put and passed.

Bill, as amended, agreed to.

TOURISM AUSTRALIA (REPEAL AND TRANSITIONAL PROVISIONS) BILL 2004—

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

The Tourism Australia Bill 2004 to be reported with amendments and the Tourism Australia (Repeal and Transitional Provisions) Bill 2004 to be reported without amendments.

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

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

8 NEW INTERNATIONAL TAX ARRANGEMENTS (PARTICIPATION EXEMPTION AND OTHER MEASURES) BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for Finance and Administration (Senator Minchin)—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 Minister for Revenue and Assistant Treasurer (Senator Coonan) the bill was read a third time.

9 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Revenue and Assistant Treasurer (Senator Coonan) moved—That government business order of the day no. 3 (Taxation Laws Amendment Bill (No. 7) 2003, consideration in committee of the whole of message no. 428 from the House of Representatives) be postponed till the next day of sitting.

Question put and passed.

10 AGED CARE AMENDMENT BILL 2004

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

Debate resumed.

Senator Forshaw moved the following amendment:

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

- (a) notes that for years the Government has ignored the pleas of the aged care industry, the community and the Australian Labor Party about its neglect of residential aged care, neglect that has caused difficulties in access and industry viability as well as concerns about the quality of care; and
- (b) registers its concern that the Government has resorted to a short-term political fix which seeks to put off until after the election the Government’s true intentions on a range of issues, including whether:
 - (i) accommodation bonds will apply consistently for both high level care and low level care,
 - (ii) an accommodation bond will apply to residents who are classified as medium care residents under the new resident classification scale,
 - (iii) there will be a further increase in the maximum daily accommodation charge for non-concessional residents from \$16.25 to \$19, a nearly 40 per cent increase from the current charge,
 - (iv) the requirement that at least 40 per cent of residents are concessional before a provider is entitled to a concessional supplement is retained into the future,
 - (v) bonds will be available to providers for the duration of a resident’s period of stay if it is greater than the current 5 years,
 - (vi) an aged care voucher system will be introduced, and
 - (vii) an auction or tender system will be introduced for the allocation of aged care places”.

Debate ensued.

At 3.45 pm: Debate was interrupted while Senator Nettle was speaking.

11 ADJOURNMENT

The President proposed the question—That the Senate do now adjourn.

Debate ensued.

Leave refused: The Leader of the Opposition in the Senate (Senator Faulkner) sought leave to table documents relating to drug use in cycling at the Australian Institute of Sport (*see entries no. 19, 21 June 2004 and no. 14, 23 June 2004*).

An objection was raised and leave was not granted.

Debate continued.

The Senate adjourned at 4.19 pm till Monday, 21 June 2004 at 12.30 pm.

12 ATTENDANCE

Present, all senators except Senators Bolkus, Collins, Conroy, Denman*, Ferris, Harradine*, Ian Macdonald, Sandy Macdonald, Ridgeway, Stott Despoja, Tierney* and Vanstone (* on leave).

HARRY EVANS
Clerk of the Senate