

2002-04

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

No. 158

MONDAY, 9 AUGUST 2004

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**1 MEETING OF SENATE**

The Senate met at 12.30 pm. The President (Senator the Honourable Paul Calvert) took the chair and read prayers.

**2 US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004  
US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004**

Order of the day read for the adjourned debate on the motion of the Minister for Defence (Senator Hill)—That these bills be now read a second time—and on the amendment moved by Senator Nettle:

Omit all words after “That”, insert “further consideration of the bills be deferred until after the Australia-United States free trade agreement has been subject to a review, with public input, of its environmental impacts, and a report of that review has been tabled in the Senate”.

Debate resumed.

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

**3 QUESTIONS**

Questions without notice were answered.

**4 FAMILY AND COMMUNITY SERVICES—CARER ALLOWANCE—DEBT RECOVERY—  
ANSWERS TO QUESTIONS**

Senator Collins moved—That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Patterson) to questions without notice asked by Senators Collins, Crossin and Moore today relating to carer allowance for persons caring for children with disabilities and to debt recovery.

Debate ensued.

Question put and passed.

**5 IMMIGRATION—DETENTION OF ASYLUM SEEKERS—ANSWER TO QUESTION**

Senator Stott Despoja moved—That the Senate take note of the answer given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to a question without notice asked by the Leader of the Australian Democrats (Senator Bartlett) today relating to the detention of asylum seekers and a High Court finding.

Question put and passed.

**6 PETITIONS**

The following 8 petitions, lodged with the Clerk by the senators indicated, were received:

Senator Collins, from 32 petitioners, requesting that the Senate oppose any legislation to abolish the Aboriginal and Torres Strait Islander Commission.

Senators Collins and Fifield, from 21 and 73 petitioners, respectively, requesting that the Senate take action to review procedures relating to political asylum seekers and remove all practices which are manifestly inhumane or in contravention of national obligations.

Senator Collins, from 19 petitioners, requesting that the Senate oppose proposed changes to Medicare and ensure bulk billing for all Australians.

Senator Faulkner, from 539 petitioners, requesting that the Senate take action to ensure priority funding to public schools to enable them to continue to provide high quality education to all, regardless of wealth, location, ethnicity, religion or special needs.

Senator Stott Despoja, from 13 petitioners, requesting that the Senate take action to ensure the principle of equitable access to universities remains fundamental to higher education policy and that any bill to further increase fees is rejected.

Senator Stott Despoja, from 19 petitioners, requesting that the Senate pass legislation to provide a national system of Government-funded paid maternity leave which provides at least a 14-week payment for working women, with minimal exclusions.

Senator Stott Despoja, from 1 367 petitioners, requesting that the Senate act to extend the Educational Textbook Subsidy Scheme indefinitely.

## 7 NOTICES

Senators Ridgeway and Stott Despoja: To move on the next day of sitting—That the Senate—

(a) notes that:

- (i) Burmese refugees in Thailand are increasingly at risk, as the Royal Thai Government has significantly limited the activities of non-government organisations (NGOs) working on the Thai-Burma border,
- (ii) Burmese refugees are progressively facing more formal and informal deportation from the Thailand border, and
- (iii) as a result, there is an increased number of Burmese being subjected to imprisonment, forced portorage and sexual harassment by soldiers of the Burmese Government, the State Peace and Development Council (SPDC), upon their return;

(b) urges:

- (i) the SPDC to end the human rights abuses being carried out on a systematic basis by the Burmese military, and
- (ii) the Royal Thai Government to end:
  - (A) restrictions on the activities of NGOs working to assist the refugees, and
  - (B) the deportation of Burmese asylum seekers and refugees and adhere to the principle of non-refoulement by accepting the nation's responsibility to provide a safe place for those at risk; and

(c) calls on the Australian Government to:

- (i) respond to the appeals from the United Nations High Commissioner for Refugees to provide resettlement opportunities for those Burmese who cannot return to their country due to likely persecution by the SPDC, and
- (ii) reconsider the policy of full diplomatic relations with the Burmese military government in light of these recurrent human rights abuses and the continued detention of Aung San Suu Kyi. (*general business notice of motion no. 960*)

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

- (a) congratulates Member of the Australian Capital Territory Legislative Assembly, Roslyn Dundas, on the successful third reading of her private member's bill, which introduces a ban on cigarette vending machines;
- (b) notes that:
  - (i) smoking cigarettes continues to be the largest single preventable cause of illness and death in Australia, killing approximately 19 000 Australians a year,
  - (ii) costs to the Australian public due to death and illness related to smoking are estimated by the National Drug Strategy to be more than \$21 billion a year,
  - (iii) ready access to cigarettes is a predictor of the uptake of smoking,
  - (iv) the sale of cigarettes is restricted to persons over 18 years of age in all Australian states and territories by law, and
  - (v) vending machines are an easily accessible, anonymous and poorly supervised source of cigarettes for young people who may be contemplating smoking or who are just beginning to smoke; and
- (c) calls on the Federal Government and the governments of all other states and territories to follow the lead of the Australian Capital Territory Legislative Assembly and introduce a total ban on cigarette vending machines, as recommended in the National Tobacco Strategy and endorsed by all states and territories and the Commonwealth, on the grounds that cigarette vending machines provide a ready supply of cigarettes to minors. (*general business notice of motion no. 961*)

Senator McLucas: To move on the next day of sitting—That there be laid on the table by the Minister representing the Minister for the Environment and Heritage, no later than 3 pm on 11 August 2004, the following documents:

- (a) all correspondence and other communications, including maps, relating to Repulse Bay or the Representative Areas Program between the Member for Dawson, Ms De-Anne Kelly, or her office, and the Great Barrier Reef Marine Park Authority (GBRMPA) during the period 1 January to 5 August 2004;
- (b) all correspondence and other communications, including maps, relating to Repulse Bay, GBRMPA or the Representative Areas Program between the Member for Dawson, Ms De-Anne Kelly, or her office, and the Minister for the Environment and Heritage or the Minister's office during the period 1 January to 5 August 2004; and
- (c) all correspondence and other communications, including maps, relating to GBRMPA or the Representative Areas Program between the Member for Dawson, Ms De-Anne Kelly, or her office, and the Department of the Environment and Heritage during the period 1 January to 5 August 2004. (*general business notice of motion no. 962*)

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

- (a) notes that Ms Irene Khan:
  - (i) as Secretary-General of Amnesty International, is the first female, first Asian and the first Muslim to lead the world's largest and foremost human rights organisation, and

- (ii) is to visit Australia to deliver the 2004 Annual Hawke Lecture entitled, ‘Human Rights and Security: Security for whom?’, for the Hawke Prime Ministerial Centre at the University of South Australia, in the Adelaide Town Hall on Wednesday, 8 September 2004; and
- (b) acknowledges Ms Khan’s work on behalf of the world’s oppressed and repressed peoples with a particular focus on violence against women and hidden human rights violations. (*general business notice of motion no. 963*)

#### 8 LEAVE OF ABSENCE

Senator Ferris, by leave, moved—That leave of absence be granted to Senator Kemp for the period 10 August to 13 August 2004 on account of government business overseas, and to Senator Murphy for the period 9 August to 13 August 2004, for health reasons.

Debate ensued.

Question put and passed.

#### 9 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Ferris, by leave and at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne), moved—That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 7 pm, to take evidence for the committee’s inquiry into the provisions of the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004.

Question put and passed.

#### 10 POSTPONEMENTS

Items of business were postponed as follows:

General business notice of motion no. 466 standing in the name of Senator Lees for 12 August 2004, proposing the introduction of the Protection of Biodiversity on Private Land Bill 2003, postponed till 29 November 2004.

General business notice of motion no. 467 standing in the name of Senator Lees for 12 August 2004, proposing the introduction of the Encouraging Communities Bill 2003, postponed till 29 November 2004.

General business notice of motion no. 957 standing in the name of Senator Nettle for today, relating to James Hardie Industries, postponed till 12 August 2004.

General business notice of motion no. 958 standing in the name of Senator Nettle for today, relating to an Airservices Australia contract for the manufacture and supply of fire engines, postponed till 10 August 2004.

#### 11 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—REFERENCE

The Leader of the Australian Democrats (Senator Bartlett), pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—That the following matters be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 30 November 2004:

- (a) the provisions of the National Animal Welfare Bill 2003;
- (b) whether there is benefit in moving towards nationally uniform and enforceable animal welfare laws in Australia; and

- (c) whether current processes adequately ensure proper animal welfare standards in areas that come under Commonwealth jurisdiction, such as imports and exports of wildlife and other animals.

Question put and passed.

## 12 URGENCY MOTION—IMMIGRATION—DETENTION OF ASYLUM SEEKERS

The Deputy President (Senator Hogg) informed the Senate that the President had received a letter from the Leader of the Australian Democrats (Senator Bartlett) advising that today he intended to move—That, in the opinion of the Senate, the following is a matter of urgency:

The need to:

- (a) acknowledge the finding of the High Court on 6 August 2004 that it is constitutional and lawful under the Migration Act to keep a person in detention indefinitely even where there is no real likelihood of that person being able to be deported from Australia in the reasonably foreseeable future; and
- (b) act immediately to amend the Migration Act to make it unlawful for a minister to be able to keep a person detained indefinitely even where there is no real likelihood of that person being able to be deported in the reasonably foreseeable future.

The proposal was supported by 4 senators.

Senator Bartlett moved the motion.

Debate ensued.

Senator Ludwig, by leave, moved the following amendment:

Omit paragraph (b), substitute:

- (b) acknowledge that the High Court in its finding was dealing with the small number of cases relating to people who are regarded as 'stateless';
- (c) acknowledge that the 4 to 3 finding, with the Chief Justice in the minority, reflects the very serious concern in the community of asylum seekers being detained for lengthy periods of time;
- (d) condemn the Government for its failures in the asylum seeker area, in particular, the lengthy detention of asylum seekers without review, the detention of children for lengthy periods, and its refusal until recently to contemplate graduated detention;
- (e) note that Labor's policy approach requires graduated detention and the ongoing monthly review of asylum seekers who are not finally assessed within 90 days of claiming asylum;
- (f) believe that Labor's approach will ensure that the small number of failed asylum seekers who are 'stateless' will not be left in limbo for lengthy periods of time;
- (g) believe that Labor's approach will ensure a case by case assessment of such cases, leading to settlement in a third party nation state, or the use in these cases of alternative forms of detention, including residential housing projects, supervision in the community or release into the Australian community on a temporary basis pursuant to the exercise of ministerial discretion; and
- (h) call on the minister to immediately review the two individuals concerned, with a view to deciding whether their continuing detention in Baxter detention centre is appropriate and in the public interest given their recent presence in the Australian community for 12 months on terms and conditions as set by the Federal Court.

Debate ensued.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 25

Senators—

Bishop	Crossin (Teller)	Ludwig	Ray
Bolkus	Evans	Mackay	Stephens
Brown	Forshaw	Marshall	Webber
Buckland	Harradine	McLucas	Wong
Campbell, George	Hogg	Moore	
Collins	Hutchins	Nettle	
Conroy	Kirk	O'Brien	

NOES, 37

Senators—

Abetz	Colbeck	Johnston	Payne
Allison	Coonan	Knowles	Ridgeway
Barnett	Eggleston (Teller)	Lees	Santoro
Bartlett	Ellison	Lightfoot	Stott Despoja
Boswell	Ferguson	Macdonald, Ian	Tchen
Brandis	Ferris	Macdonald, Sandy	Troeth
Calvert	Fifield	Mason	Watson
Campbell, Ian	Greig	McGauran	
Chapman	Heffernan	Minchin	
Cherry	Humphries	Murray	

Question negatived.

Main question put.

The Senate divided—

AYES, 11

Senators—

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

NOES, 49

Senators—

Abetz	Coonan	Johnston	Moore
Barnett	Crossin	Kirk	O'Brien
Bishop	Eggleston (Teller)	Knowles	Payne
Bolkus	Ellison	Lightfoot	Ray
Boswell	Evans	Ludwig	Santoro
Brandis	Ferguson	Macdonald, Ian	Stephens
Buckland	Ferris	Macdonald, Sandy	Tchen
Calvert	Fifield	Mackay	Troeth
Campbell, George	Forshaw	Marshall	Watson
Chapman	Heffernan	Mason	Webber
Colbeck	Hogg	McGauran	
Collins	Humphries	McLucas	
Conroy	Hutchins	Minchin	

Question negatived.

**13 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REPORT—  
ANTI-TERRORISM BILL (NO. 2) 2004**

The President tabled the following report and documents received on 6 August 2004:

Legal and Constitutional Legislation Committee—Provisions of the Anti-terrorism Bill (No. 2) 2004—Report, dated August 2004, *Hansard* record of proceedings, documents presented to the committee and submissions [95].

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

**14 INDIGENOUS AUSTRALIANS—ANANGU TOURS—DOCUMENT**

The Acting Deputy President (Senator Hutchins) tabled the following document:

Indigenous Australians—Anangu Tours—Letter to the President of the Senate from the Minister for Small Business and Tourism (Mr Hockey) responding to the resolution of the Senate of 22 June 2004, dated 4 August 2004.

Senator O'Brien, by leave, moved—That the Senate take note of the document.

Debate ensued.

Question put and passed.

**15 AUDITOR-GENERAL—AUDIT REPORT NO. 7 OF 2004-05—DOCUMENT**

The Acting Deputy President (Senator Hutchins) tabled the following document:

Auditor-General—Audit report no. 7 of 2004-05—Performance audit—Administration of taxation rulings: Follow-up audit: Australian Taxation Office.

**16 ENVIRONMENT—BUSHFIRE MITIGATION AND MANAGEMENT—ORDER FOR  
PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE**

The Special Minister of State (Senator Abetz), by leave, made a statement relating to the order of the Senate of 5 August 2004 for the production of documents concerning an inquiry on bushfire mitigation and management (*see entry no. 11, 5 August 2004*).

Senator Brown, by leave, moved—That the Senate take note of the statement.

Debate ensued.

Question put and passed.

**17 PRESIDENTIAL ELECTIONS IN INDONESIA—AUSTRALIAN PARLIAMENTARY  
OBSERVER DELEGATION—DOCUMENT**

Senator Webber, by leave, tabled the following document:

Presidential elections in Indonesia 5 July 2004—Report of the Australian parliamentary observer delegation, 30 June to 9 July 2004, dated July 2004.

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

Debate ensued.

Question put and passed.

**18 DOCUMENTS**

The following documents were tabled by the Clerk:

A New Tax System (Goods and Services Tax) Act—GST-free Supply (Health Goods) Determination 2004.

- Australian Sports Drug Agency Act—  
 Australian Sports Drug Agency Drug Testing (Scheme A) Amendment Orders 2004 (No. 2).  
 Australian Sports Drug Agency Drug Testing (Scheme B) Amendment Orders 2004 (No. 2).  
 Regulations—Statutory Rules 2004 No. 236.
- Civil Aviation Act—Civil Aviation Regulations—  
 Civil Aviation Amendment Order (No. 3) 2004.  
 Civil Aviation Amendment Order (No. 4) 2004.  
 Exemptions Nos CASA EX27/2004-CASA EX29/2004 and CASA EX31/2004.  
 Instruments Nos CASA 411/04, CASA 435/04 and CASA 436/04.
- Fisheries Management Act—Regulations—Statutory Rules 2004 Nos 233-235.
- Health Insurance Act—Regulations—Statutory Rules 2004 Nos 237 and 238.
- Industrial Chemicals (Notification and Assessment) Act—Regulations—Statutory Rules 2004 No. 239.
- International Organisations (Privileges and Immunities) Act—Regulations—Statutory Rules 2004 No. 240.
- Migration Act—Statement for period 1 January to 30 June 2004 under section 417, dated 28 June 2004.
- National Health Act—  
 Declarations Nos PB 10-PB 12 of 2004.  
 Determination No. PB 13 of 2004.
- Workplace Relations Act—Guidelines under section 88AGA, dated 9 August 2004.

**19 SCHOOLS ASSISTANCE (LEARNING TOGETHER—ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) BILL 2004  
 STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE)  
 LEGISLATION AMENDMENT BILL 2004**

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

Message no. 660, dated 5 August 2004—A Bill for an Act to grant financial assistance to the States for 2005 to 2008 for primary and secondary education, and for related purposes.

Message no. 659, dated 5 August 2004—A Bill for an Act relating to the grant of financial assistance to the States for primary and secondary education, and for related purposes.

The Special Minister of State (Senator Abetz) 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 Abetz moved—That these bills be now read a second time.

On the motion of Senator Buckland the debate was adjourned.

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

**20 TAX LAWS AMENDMENT (WINE PRODUCER REBATE AND OTHER MEASURES)  
BILL 2004**

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

Message no. 661, dated 9 August 2004—A Bill for an Act about tax relating to wine and capital allowances for grapevines, and for related purposes.

The Special Minister of State (Senator Abetz) 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 Abetz moved—That this bill be now read a second time.

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*Explanatory memorandum:* Senator Abetz tabled a revised explanatory memorandum relating to the bill.

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

**21 US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004  
US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004**

Order of the day read for the adjourned debate on the motion of the Minister for Defence (Senator Hill)—That these bills be now read a second time—*and on the amendment moved by Senator Nettle (see entry no. 2).*

Question—That the amendment be agreed to—put.

The Senate divided—

**AYES, 11**

Senators—

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

**NOES, 39**

Senators—

Barnett	Crossin	Kirk	Moore
Bishop	Eggleston	Knowles	O'Brien
Bolkus	Ferris	Lightfoot	Santoro
Boswell	Fifield	Ludwig	Stephens
Brandis	Forshaw	Macdonald, Ian	Tchen
Buckland	Heffernan	Macdonald, Sandy	Troeth
Campbell, George	Hill	Mackay	Watson
Carr	Hogg	Marshall	Webber
Colbeck	Hutchins	Mason	Wong
Conroy	Johnston	McGauran (Teller)	

Question negatived.

Main question put.

The Senate divided—

AYES, 38

Senators—

Barnett	Eggleston	Knowles	O'Brien
Bishop	Ferris	Lightfoot	Santoro
Boswell	Fifield	Ludwig	Stephens
Brandis	Forshaw	Macdonald, Ian	Tchen
Buckland	Heffernan	Macdonald, Sandy	Troeth
Campbell, George	Hill	Mackay	Watson
Carr	Hogg	Marshall	Webber
Colbeck	Hutchins	Mason	Wong
Conroy	Johnston	McGauran (Teller)	
Crossin	Kirk	Moore	

NOES, 11

Senators—

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

Question agreed to.

Bills read a second time.

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

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*In the committee*

**US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004—**

Bill taken as a whole by leave.

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*Documents:* Senator Conroy, by leave, tabled the following documents:

US Free Trade Agreement Implementation Bill 2004—Copies of memoranda of advice concerning proposed amendments to the US Free Trade Agreement Implementation Bill 2004 from—

Mr David Shavin, QC, dated 9 August 2004.

Special Counsel (Pat Brazil) and Partner (Anthony Willis), Phillips Fox.

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Bill debated.

Senator Brown moved the following amendments together by leave:

Page 4 (after line 11), after clause 3, insert:

**4 Definitions**

In this Act, *the agreement* means the Australia-United States Free Trade Agreement signed on behalf of Australia and the United States of America in Washington on 18 May 2004.

Page 4 (after line 11), after clause 3, insert:

**5 Parliamentary scrutiny**

- (1) The Joint Committee and each committee and working group established under the agreement must, on or before each 30 June and 31 December occurring after the agreement enters into force, provide to the minister a report on:
  - (a) membership and attendance at meetings;
  - (b) numbers of meetings;
  - (c) issues considered and decisions and recommendations made at meetings;
  - (d) any other activities.
- (2) The minister must cause each report provided under subsection (2) to be laid before each House of the Parliament within 5 days after the report is provided to the minister.
- (3) For the purposes of subsection (3), if a House does not meet within 5 days after a report is provided, the minister must present the report to the Presiding Officer of that House or to a person authorised to perform the duties of that Presiding Officer.
- (4) An instrument that gives effect to, or interprets, any provision of the agreement is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Debate ensued.

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

**22 ADJOURNMENT**

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

Debate ensued.

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*Documents:* Senator Lees, by leave, tabled the following documents:

Science and technology—Scientific misconduct—

Letter of response to the President of the Senate and senators from Professor Bruce M Hall, Professor of Medicine, dated 1 August 2004.

Response of Professor Bruce M Hall, Professor of Medicine, SWS Clinical School, University of New South Wales (UNSW) to the report of the independent external inquiry into scientific misconduct, commissioned by the Council of UNSW.

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The Senate adjourned at 10.02 pm till Tuesday, 10 August 2004 at 12.30 pm.

**23 ATTENDANCE**

Present, all senators except Senators Cook\*, Lundy, Murphy\*, Scullion and Tierney (\* on leave).

**HARRY EVANS**  
Clerk of the Senate