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Contents

1	Meeting of Senate	3854
2	Government Documents	3854
3	Foreign Affairs, Defence and Trade References Committee—Leave to Meet During Sitting	3854
4	US Free Trade Agreement Implementation Bill 2004 US Free Trade Agreement Implementation (Customs Tariff) Bill 2004.....	3854
5	Questions	3855
6	Minister for Defence—Answers to Questions	3856
7	Petition.....	3856
8	Notices.....	3856
9	Postponements.....	3859
10	Health—Cigarette Vending Machines	3859
11	Council of Australian Governments	3860
12	Parliament—Parliamentary Terms	3860
13	Environment—Repulse Bay—Order for Production of Documents.....	3861
14	Industry—Airservices Australia—Emergency Vehicles	3861
15	United Kingdom and the Republic of Ireland—Visit by the President— Document	3862
16	People’s Republic of China—Visit by the President—Document	3862
17	Environment, Communications, Information Technology and the Arts References Committee—Report—Competition in Broadband Services.....	3862
18	Documents.....	3863
19	Committees—Appointment of Member.....	3863
20	Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004	3863
21	Indigenous Education (Targeted Assistance) Amendment Bill 2004.....	3864
22	US Free Trade Agreement Implementation Bill 2004 US Free Trade Agreement Implementation (Customs Tariff) Bill 2004.....	3864
23	Government Documents—Consideration	3865
24	Adjournment	3865
25	Attendance.....	3865

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 GOVERNMENT DOCUMENTS

The following government documents were tabled:

Productivity Commission—Reports—

No. 29—Impacts of native vegetation and biodiversity regulations, 8 April 2004.

No. 31—Review of the gas access regime, 11 June 2004.

3 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Mackay, by leave and at the request of the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hutchins), moved—That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a public meeting during the sitting of the Senate today, from 3.30 pm to 5 pm, to take evidence for the committee's inquiry into the effectiveness of the Australian military justice system.

Question put and passed.

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

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

In the committee

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004—

Consideration resumed of the bill—*and of the amendments moved by Senator Brown:*

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 resumed.

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

Senator Nettle moved the following amendment:

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

6 Free trade agreement subordinate to public welfare objectives

For the purposes of the agreement:

- (a) regulatory actions which are designed for the purpose of, and applied to achieve, legitimate public welfare objectives, including the protection of:
 - (i) public health;
 - (ii) public safety;
 - (iii) the environment;do not constitute indirect expropriations for the purposes of the agreement; and
- (b) no compensation is payable as a consequence of any expropriation or nationalisation arising under Article 11.7(1) of the agreement unless compensation would be payable under an Australian law other than this Act to an Australian person or company.

Debate ensued.

At 2 pm: The President resumed the chair and the Temporary Chair of Committees (Senator McLucas) reported progress.

5 QUESTIONS

Questions without notice were answered.

Distinguished visitors: The President welcomed members of a parliamentary delegation from Ireland led by Dr Rory O'Hanlon, Chairman of the Dail, and, with the concurrence of honourable senators, invited Dr O'Hanlon and Senator Rory Kiely, Chairman of the Senate, to take a seat on the floor of the chamber.

Further questions without notice were answered.

6 MINISTER FOR DEFENCE—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 today.

Debate ensued.

Question put and passed.

7 PETITION

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

From 15 petitioners, requesting that the Senate take action to ensure that Mamdouh Habib's rights are acknowledged and that he be returned to Australia and entitled to a civil trial if charged with any crime.

8 NOTICES

Notices of motion:

Senator Mason: To move on the next day of sitting—That the time for the presentation of the report of the Joint Standing Committee on Electoral Matters on electoral funding and disclosure and any amendments to the Commonwealth Electoral Act necessary in relation to political donations be extended to 30 September 2004. (*general business notice of motion no. 964*)

The Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan): To move on the next day of sitting—That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 11 August 2004, from 4.30 pm to 8 pm, to take evidence for the committee's inquiry into the provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004. (*general business notice of motion no. 965*)

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

(a) notes that:

- (i) 9 August 2004 was International Day of the World's Indigenous Peoples,
- (ii) this is the final year of the International Decade of the World's Indigenous Peoples, which commenced in 1995, and
- (iii) the theme of the decade was 'Indigenous people – partnership in action', with the focus on strengthening international cooperation for the solution of problems faced by Indigenous people in such areas as human rights, the environment, development, education and health;

(b) notes that Mr John Howard's Coalition Government has been in power for 8 of the 10 years in which the human rights of Indigenous people have been an international focus and that, in those 8 years:

- (i) the gap between the life expectancy of Indigenous and non-Indigenous Australians has widened,
- (ii) Indigenous Australians continue to suffer from ill-health at drastically higher rates than non-Indigenous Australians, for example, Indigenous people suffer from middle ear infections at a rate that is more than 4 times that determined by the World Health Organization to constitute a national health emergency,

- (iii) the rates of imprisonment of Indigenous Australians have increased compared to those of non-Indigenous Australians,
 - (iv) the ratio of Indigenous to non-Indigenous university students has declined, and
 - (v) amendments to the *Native Title Act 1993* have further diminished Indigenous land rights;
- (c) notes that:
- (i) self-determination is a human right enshrined in international law, that services to Indigenous people are most effective when they are controlled and run by Indigenous people, and that Indigenous self-determination in Australia has been attacked by the Howard Government's mainstreaming approach, including the recent abolition of the Aboriginal and Torres Strait Islander Commission, and the tendering out of Indigenous Legal Services, and
 - (ii) Australia is the only state which has spoken, in the inter-sessional Working Group, against the inclusion of any language of self-determination in the draft Declaration on the Rights of Indigenous Peoples; and
- (d) calls on the Government to:
- (i) immediately abandon its alternative draft Declaration on the Rights of Indigenous Peoples, as this contravenes the basic anti-discrimination principles of the common article 2 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and
 - (ii) engage in constructive dialogue with Indigenous groups in Australia, and to ensure that any proposal to alter the current text of the draft declaration adheres to the principles espoused by Mick Dodson in 1996, namely, the proposal must be reasonable, necessary and strengthen the existing text, and accord with the principles of equality, non-discrimination and the absolute prohibition of racial discrimination. (*general business notice of motion no. 966*)

Senator Allison: To move on the next day of sitting—That there be laid on the table by the Minister for Finance and Administration, no later than 1 pm on 12 August 2004, the document containing the Commonwealth sites, including offshore islands and territories, listed as potential sites for the storage of nuclear waste and referred to by the Minister on the Australian Broadcasting Corporation's *AM* program on 14 July 2004. (*general business notice of motion no. 967*)

Senator Sherry: To move 15 sitting days after today—That new Divisions 9.2A and 9.2B in item [10] of Schedule 1 to the Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2), as contained in Statutory Rules 2004 No. 84 and made under the *Superannuation Industry (Supervision) Act 1993*, be disallowed.

The Leader of the Australian Democrats (Senator Bartlett): To move 2 sitting days after today—That the Senate—

- (a) notes that:
- (i) the High Court of Australia on Friday, 6 August 2004, gave rulings addressing two areas of great significance regarding existing Australian legislation,

- (ii) the rulings showed that there is a lack of any statutory provisions for stateless people within the jurisdiction of Australia, resulting in the possibility of lifetime detention for any stateless person who was not granted a protection visa but cannot be deported to any other country, and
 - (iii) the rulings also showed that there is a lack of legislation relating to conditions of administrative detention that must be met for that detention to remain lawful; and
- (b) calls on the Australian Government, as a matter of urgency, to:
- (i) enact legislation to prevent the situation whereby people who have been charged with no crime are faced with the possibility of lifetime detention,
 - (ii) enact legislation to resolve the issue whereby there are no legal provisions regarding the conditions which administrative detention must meet in order to remain lawful,
 - (iii) resolve the issues surrounding stateless people currently in immigration detention in Australia, by the granting of visas while the Government is unable to deport those people, and
 - (iv) investigate the implications of the High Court's interpretation of the Australian Constitution that allows for lifetime administrative detention, with a view to enacting a Bill of Rights to protect people within the jurisdiction of Australia from such an abuse of basic human rights. (*general business notice of motion no. 968*)

The Minister for the Environment and Heritage (Senator Ian Campbell): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to provide certainty about the validity of certain plans of management under the *Fisheries Management Act 1991*, and for related purposes. ***Fisheries (Validation of Plans of Management) Bill 2004***.

The Minister for the Environment and Heritage (Senator Ian Campbell): To move on the next day of sitting—That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004, allowing it to be considered during this period of sittings.

Document: Senator Ian Campbell tabled the following document:

Consideration of legislation—Statement of reasons for introduction and passage of the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004 in the 2004 spring sittings.

Contingent notices of motion: Senator Greig gave contingent notices of motion as follows—

No. 1—To move (contingent on the notice of motion for the first reading of the Marriage Amendment Bill 2004 being called on)—That so much of the standing orders be suspended as would prevent Senator Greig moving a motion to provide that the Marriage Amendment Bill 2004 not be further considered until the Senate has finally considered the Sexuality and Gender Identity Discrimination Bill 2003.

No. 2—To move (contingent on the Marriage Amendment Bill 2004 being read a second time)—That so much of the standing orders be suspended as would prevent Senator Greig moving a motion to provide that the Marriage Amendment Bill 2004 not be further considered until the Senate has finally considered the Sexuality Anti-Vilification Bill 2003.

No. 3—To move (contingent on the order of the day for the further consideration of the Marriage Amendment Bill 2004 being called on)—That so much of the standing orders be suspended as would prevent Senator Greig moving a motion to provide that further consideration of the Marriage Amendment Bill 2004 be postponed until the Legal and Constitutional Legislation Committee has presented its report on the provisions of the Marriage Legislation Amendment Bill 2004.

9 POSTPONEMENTS

Items of business were postponed as follows:

General business notice of motion no. 960 standing in the names of Senators Ridgeway and Stott Despoja for today, relating to human rights in Thailand, postponed till 11 August 2004.

10 HEALTH—CIGARETTE VENDING MACHINES

Senator Allison amended general business notice of motion no. 961 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—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 Tasmania 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.

Question put and passed.

11 COUNCIL OF AUSTRALIAN GOVERNMENTS

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 956—That the Senate—

- (a) notes that the Council of Australian Governments (COAG) and its ministerial councils are increasingly being used as decision-making forums, reaching binding formal agreements which bypass effective parliamentary and public scrutiny;
- (b) considers that this device undermines the authority of Parliament; and
- (c) calls on the Government to:
 - (i) hold COAG and ministerial council meetings in open session, and
 - (ii) submit binding agreements of COAG and ministerial councils to Parliament for ratification before implementation.

Question put.

The Senate divided—

AYES, 10

Senators—

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

NOES, 43

Senators—

Barnett	Denman	Kirk	Patterson
Bishop	Eggleston	Knowles	Payne
Brandis	Ferguson	Ludwig	Santoro
Buckland	Ferris (Teller)	Lundy	Scullion
Campbell, George	Fifield	Macdonald, Sandy	Stephens
Campbell, Ian	Forshaw	Mackay	Tchen
Carr	Heffernan	Marshall	Troeth
Chapman	Hogg	McGauran	Watson
Colbeck	Humphries	McLucas	Webber
Collins	Hutchins	Moore	Wong
Crossin	Johnston	O'Brien	

Question negatived.

12 PARLIAMENT—PARLIAMENTARY TERMS

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 944—That the Senate calls on the Government to legislate for fixed 3-year parliamentary terms to commence after the next federal election.

Question put.

The Senate divided—

AYES, 9

Senators—

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

NOES, 44

Senators—

Barnett	Denman	Johnston	O'Brien
Bishop	Eggleston	Kirk	Patterson
Brandis	Ferguson	Knowles	Payne
Buckland	Ferris (Teller)	Ludwig	Santoro
Campbell, George	Fifield	Lundy	Scullion
Campbell, Ian	Forshaw	Macdonald, Sandy	Stephens
Carr	Harradine	Mackay	Tchen
Chapman	Heffernan	Marshall	Troeth
Colbeck	Hogg	McGauran	Watson
Collins	Humphries	McLucas	Webber
Crossin	Hutchins	Moore	Wong

Question negatived.

13 ENVIRONMENT—REPULSE BAY—ORDER FOR PRODUCTION OF DOCUMENTS

Senator McLucas amended general business notice of motion no. 962 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That there be laid on the table by 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.

Question put and passed.

14 INDUSTRY—AIRSERVICES AUSTRALIA—EMERGENCY VEHICLES

Senator Nettle, also on behalf of Senator Carr, amended general business notice of motion no. 958 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes the recent Government decision to award an \$18 million Airservices Australia contract for the manufacture and supply of airport emergency vehicles to an Austrian firm, Rosenbauer, in preference to a Hunter Valley company, the Varley Group;
- (b) condemns this decision for:
 - (i) failing to promote regional industrial development, and
 - (ii) missing an opportunity to create 60 direct jobs and up to 180 indirect jobs in the Hunter region, including 10 to 15 apprenticeships;
- (c) notes the severe weakness in the Government's procurement guidelines which means that it is not mandatory for the following to be considered:

- (i) the development of long-term, internationally competitive industry in Australia,
 - (ii) enhancement of Australia's export potential and import replacement, and
 - (iii) employment, training and skills development, and initiatives in regional areas;
- (d) congratulates the Hunter region workers and companies for leading a campaign to overturn this Government decision;
- (e) condemns the Government for not arranging for departmental officials to visit the Varley Group to gain an appreciation of the company, its capability and its products; and
- (f) calls on the Government to:
- (i) investigate the awarding of this contract and reconsider the decision to award it to an overseas company, to create economic growth and jobs in the Hunter region, and
 - (ii) develop and implement effective government purchasing and manufacturing policies that promote Australian industry development and jobs.

Question put and passed.

15 UNITED KINGDOM AND THE REPUBLIC OF IRELAND—VISIT BY THE PRESIDENT—DOCUMENT

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

United Kingdom and the Republic of Ireland—Visit by the President, 24 April to 8 May 2003—Report by Senator the Honourable Paul Calvert, President of the Senate, dated August 2004.

16 PEOPLE'S REPUBLIC OF CHINA—VISIT BY THE PRESIDENT—DOCUMENT

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

People's Republic of China—Visit by the President, 5 to 11 June 2004—Report by Senator the Honourable Paul Calvert, President of the Senate, dated August 2004.

17 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE—REPORT—COMPETITION IN BROADBAND SERVICES

The Leader of the Australian Democrats (Senator Bartlett), at the request of the Chair of the Environment, Communications, Information Technology and the Arts References Committee (Senator Cherry), tabled the following report and documents:

Environment, Communications, Information Technology and the Arts References Committee—Competition in broadband services—Report, dated August 2004, *Hansard* record of proceedings [7 vols], documents presented to the committee and submissions [55].

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

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

Debate ensued.

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

18 DOCUMENTS

The following documents were tabled by the Clerk:

Class Rulings CR 2004/81 and CR 2004/82.

Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act—Family Assistance (One-off Payments to Families and Carers) Scheme 2004.

Product Ruling—

PR 2003/8 (Notice of Withdrawal).

PR 2004/80.

Social Security Act—Social Security (Assurances of Support) Determination 2004.

Sydney Airport Curfew Act—Dispensations granted under section 20—Dispensation No. 8/04 [2 dispensations].

19 COMMITTEES—APPOINTMENT OF MEMBER

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

The Minister for Communications, Information Technology and the Arts (Senator Coonan), by leave, moved—That Senator Colbeck be appointed as a participating member of the following committees:

Community Affairs Legislation and References Committees.

Economics Legislation and References Committees.

Employment, Workplace Relations and Education Legislation and References Committees.

Environment, Communications, Information Technology and the Arts Legislation and References Committees.

Finance and Public Administration Legislation and References Committees.

Foreign Affairs, Defence and Trade Legislation and References Committees.

Legal and Constitutional Legislation and References Committees.

Question put and passed.

20 CRIMES LEGISLATION AMENDMENT (TELECOMMUNICATIONS OFFENCES AND OTHER MEASURES) BILL (NO. 2) 2004

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

Message no. 662, dated 9 August 2004—A Bill for an Act to amend the *Criminal Code Act 1995*, and for related purposes.

The Minister for Communications, Information Technology and the Arts (Senator Coonan) 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 Coonan 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.

21 INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT BILL 2004

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

Message no. 663, dated 9 August 2004—A Bill for an Act to amend the law relating to assistance for Indigenous education, and for related purposes.

The Minister for Communications, Information Technology and the Arts (Senator Coonan) 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 Coonan moved—That this bill be now read a second time.

On the motion of Senator Crossin the debate was adjourned.

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

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

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

In the committee

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004—

Consideration resumed of the bill—*and of the amendment moved by Senator Nettle (see entry no. 4).*

Debate resumed.

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

US Free Trade Agreement Implementation Bill 2004—Australia-United States Free Trade Agreement.

Debate continued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 12

Senators—

Allison (Teller)
Bartlett
Brown

Cherry
Greig
Harradine

Harris
Lees
Murray

Nettle
Ridgeway
Stott Despoja

NOES, 42

Senators—

Barnett	Eggleston (Teller)	Lightfoot	Payne
Bishop	Evans	Ludwig	Scullion
Boswell	Ferguson	Lundy	Sherry
Buckland	Ferris	Mackay	Stephens
Calvert	Fifield	Marshall	Tchen
Campbell, George	Forshaw	Mason	Troeth
Carr	Heffernan	McGauran	Watson
Chapman	Hill	McLucas	Webber
Colbeck	Hogg	Moore	Wong
Collins	Hutchins	O'Brien	
Crossin	Knowles	Patterson	

Question negatived.

Senator Brown moved the following amendment:

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

7 Parties may not submit to arbitration

For the purposes of this agreement, consultations on investor-state dispute settlement, on any matter, may not include arbitration between an investor and a party.

Debate ensued.

At 6.50 pm: The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Lightfoot) reported progress.

23 GOVERNMENT DOCUMENTS—CONSIDERATION

The government documents tabled earlier today (*see entry no. 2*) were called on but no motion was moved.

24 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 8.59 pm till Wednesday, 11 August 2004 at 9.30 am.

25 ATTENDANCE

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

HARRY EVANS
Clerk of the Senate