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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 GOVERNMENT DOCUMENTS

The following government documents were tabled:

Crimes Act 1914—Independent review of Division 11A of Part 1D: Forensic procedures—Overseas incidents, July 2004.

Customs Act 1901—Report for 2003-04 under subsection 233(6) on the conduct of customs officers under subsection 233(3A) of the Act.

3 FISHERIES (VALIDATION OF PLANS OF MANAGEMENT) BILL 2004

The Minister for the Environment and Heritage (Senator Ian Campbell), pursuant to notice, moved government business notice of motion no. 1—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.

Question put and passed.

Senator Ian Campbell presented the bill and 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 Campbell moved—That this bill be now read a second time.

Explanatory memorandum: Senator Ian Campbell tabled an explanatory memorandum relating to the bill.

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.

4 CONSIDERATION OF LEGISLATION

The Minister for the Environment and Heritage (Senator Ian Campbell), pursuant to notice, moved government business notice of motion no. 2—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.

Question put and passed.

5 **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 Brown:

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 resumed.

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

US Free Trade Agreement Implementation Bill 2004—Copy of extract ‘Table of NAFTA Chapter 11 cases’, *Public Citizen & Friends of the Earth*, September 2001.

Debate continued.

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

Senator Ridgeway moved the following amendment:

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

5 Review of operation of Act

- (1) The Minister must cause an independent review of the operation of this Act to be initiated annually by the Free Trade Agreement Review Board (FTARB), on the anniversary of the day on which this Act receives the Royal Assent.
- (2) The FTARB is to be selected and appointed in accordance with subsection (3).
- (3) The Minister must, before the first annual review required by subsection (1), by writing determine a code of practice for selecting and appointing the FTARB members and acting FTARB members which sets out general principles on which selection and appointment is to be made, including but not limited to:
 - (a) merit, including but not limited to:
 - (i) experience in assessing economic impact of free trade agreements;
 - (ii) experience in assessing social impact of free trade agreements;

- (iii) experience in assessing cultural impact of free trade agreements; or
 - (iv) experience in assessing environmental impact of free trade agreements;
 - (b) independent scrutiny of appointments;
 - (c) probity;
 - (d) openness and transparency.
- (4) The persons undertaking the review required by subsection (1) must consult:
- (a) the Commonwealth and the States; and
 - (b) a broad range of persons with expertise in or experience of relevant disciplines;
- and the views of the Commonwealth, the States and the persons mentioned in paragraph (b) must be set out in the report to the extent that it is reasonably practicable to do so.
- (5) Each review required by subsection (1) must be completed within 3 months of the initiation of that review.
- (6) The Minister must cause to be tabled in each house of the Parliament a written report of the review within 5 sitting days of that House after receipt of the report.
- (7) The report must contain analysis of and, if required, recommendations to, the Parliament as to the impact of each chapter of the Agreement on Australian interests.

Debate ensued.

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

Senator Ridgeway moved the following amendment:

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

6 Cessation of operation of Act

This Act, unless sooner repealed, ceases to operate at the expiration of four years after its commencement.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 11

Senators—

Allison (Teller)
Brown
Cherry

Greig
Harradine
Harris

Lees
Murray
Nettle

Ridgeway
Stott Despoja

NOES, 36

Senators—

Abetz	Conroy	Kirk	Payne
Bishop	Crossin	Ludwig	Santoro
Brandis	Denman	Lundy	Stephens
Buckland	Eggleston (Teller)	Macdonald, Sandy	Tchen
Campbell, George	Fifield	Mackay	Tierney
Campbell, Ian	Hill	Marshall	Troeth
Carr	Hogg	McGauran	Watson
Colbeck	Humphries	McLucas	Webber
Collins	Hutchins	Moore	Wong

Question negatived.

After 12.45 pm: The Deputy President (Senator Hogg) resumed the chair and the Chair of Committees reported progress.

6 MATTERS OF PUBLIC INTEREST

Matters of public interest were discussed.

At 2 pm—

7 QUESTIONS

Questions without notice were answered.

Distinguished visitors: The President welcomed members of a parliamentary delegation from Sri Lanka led by the Speaker, the Honourable WJM Lokobandara, MP, and, with the concurrence of honourable senators, invited the Speaker to take a seat on the floor of the chamber.

Further questions without notice were answered.

8 COMMUNICATIONS—FORMER SENATOR ALSTON—ANSWER TO QUESTION—STATEMENT BY LEAVE

The Minister for Communications, Information Technology and the Arts (Senator Coonan), by leave, made a statement clarifying the answer she gave to a question without notice asked by Senator Mackay today relating to contact between the minister's office and former Senator Alston.

Statement by leave: Senator Mackay, by leave, made a statement relating to the matter.

9 DEFENCE—IRAQ—ANSWER TO QUESTION

Senator Hutchins moved—That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Hutchins today relating to Iraq and comments made by Liberal Party candidate Mr Malcolm Turnbull.

Debate ensued.

Question put and passed.

10 IMMIGRATION—DETENTION OF ASYLUM SEEKERS—ANSWER TO QUESTION

The Leader of the Australian Democrats (Senator Bartlett) 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 Senator Bartlett today relating to detention of asylum seekers.

Question put and passed.

11 PETITIONS

The following 4 petitions, lodged with the Clerk by the senators indicated, were received:

Senator Faulkner, from 16 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.

Senator Humphries, from 58 petitioners, requesting that the Senate call on the Human Rights and Equal Opportunity Commission to ensure that slanderous and offensive statements relating to a nation or its armed forces do not appear in the media.

Senator Webber, from 166 petitioners, requesting that the Senate oppose cuts in the number of places at technical and further education institutions.

Senator Webber, from 115 petitioners, requesting that the Senate take action to restore bulk billing by general practitioners.

12 NOTICES

The Chair of the Rural and Regional Affairs and Transport References Committee (Senator Ridgeway): To move on the next day of sitting—That the Rural and Regional Affairs and Transport References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Friday, 13 August 2004, from 9.30 am, in relation to its inquiry into forestry plantations. (*general business notice of motion no. 969*)

The Chair of the Rural and Regional Affairs and Transport References Committee (Senator Ridgeway): To move on the next day of sitting—That the time for the presentation of the report of the Rural and Regional Affairs and Transport References Committee on forestry plantations be extended to 2 September 2004. (*general business notice of motion no. 970*)

The Minister for the Environment and Heritage (Senator Ian Campbell): To move on the next day of sitting—That, on Thursday, 12 August 2004:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
- (b) if the Senate is sitting at midnight, the sitting of the Senate shall be suspended till 9 am on Friday, 13 August 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) shall 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 4.30 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, including any messages from the House of Representatives:
- US Free Trade Agreement Implementation Bill 2004 and a related bill
 - Anti-terrorism Bill (No. 3) 2004
 - Marriage Amendment Bill 2004
 - Telecommunications (Interception) Amendment (Stored Communications) Bill 2004
 - Surveillance Devices Bill (No. 2) 2004
 - Trade Practices Legislation Amendment Bill 2004
 - Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Budget Measures) Bill 2004
 - Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004
 - Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004
 - Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004
 - Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002.

Senator Ridgeway: To move on the next day of sitting—That the Senate, noting that the Games of the XXVIIIth Olympiad will commence in Athens, Greece on Friday, 13 August 2004:

- (a) notes that the Elgin Marbles were removed from Athens during the occupation by the Ottoman Empire;
- (b) recognises that the Parthenon is the most important symbol of Greek cultural heritage and, according to the declaration of universal human and cultural rights, Greece has a duty to preserve its cultural heritage in its totality, both for its citizens and for the international community;
- (c) acknowledges that the Elgin Marbles, or more precisely, the Parthenon Sculptures, are not freestanding works of art but integral architectural features of the Parthenon;
- (d) notes that the Parthenon was erected in the 5th century BC to celebrate the victory of Athenian democracy, which encouraged the creation and development of all the arts as well as politics, philosophy, theatre and science as we know them today;
- (e) is of the view that it is inappropriate that over half of the Parthenon's celebrated sculptural elements should be exhibited 2 000 miles away from the remaining elements and the monument for which they were expressly designed and carved;
- (f) finds that the request by the Greek community for the reunification of the sculptural elements of the Parthenon in Athens is a rightful and a legitimate request;
- (g) is of the view that returning the Elgin Marbles to Greece would be a key move in promoting Europe's common cultural heritage; and
- (h) calls on the Government of the United Kingdom to give positive consideration to Greece's request for the return of the Elgin Marbles to their natural site. (*general business notice of motion no. 971*)

Senator Carr: To move on the next day of sitting—That the Senate condemns the Howard Government for its failure in education and research policy, and in particular:

- (a) a schools policy that has seen inordinate increases in Commonwealth funding to the wealthiest, high-fee private schools at the expense of public schools and of disadvantaged non-government schools;
- (b) the failure to secure a new Australian National Training Authority agreement and to accord priority to vocational education and training in a climate of growing unmet demand for vocational courses and serious skill shortages in traditional trade and technical areas;
- (c) higher education policies that have brought an ever-increasing burden of fees and charges, so that fees at Australian public universities are now higher than at any time since 1939 and the highest of all developed countries;
- (d) the failure to adopt a coherent national research strategy, undermining innovation and exacerbating the shortage of highly-skilled researchers; and
- (e) the failure to lift private investment in research and development. (*general business notice of motion no. 972*)

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

- (a) notes:
 - (i) the reports of many independent observers, including those sent by the African Union, that the so-called Janjaweed militias have carried out numerous massacres, summary executions, rapes, burnings of towns and villages, and forcible depopulations in the Darfur region of western Sudan,
 - (ii) reports by Human Rights Watch that the Sudanese military regime has armed, supported and supervised the militias, and that Sudanese government forces have directly participated in some of these actions,
 - (iii) estimates by reputable sources that at least 300 000 people have already been killed or died as a direct or indirect result of this campaign, that more than a million people have been made homeless, that more than 100 000 have been forced to seek refuge in Chad, and that an unknown but large number of women have been raped in the course of these attacks, and
 - (iv) reports that the militias have destroyed mosques, killed Muslim religious leaders and desecrated Qurans in the course of their attacks;
- (b) condemns the military regime in Sudan for instigating a policy of forcible depopulation of areas considered disloyal to Khartoum, which has led to massive social dislocation and deaths of innocent civilians, in particular, the Fur, Masalit and Zaghawa ethnic groups in Darfur;
- (c) holds the Sudanese regime responsible for the crimes committed by its armed forces and by the militias under its control;
- (d) welcomes the decision by the Australian Government to allocate \$20 million for relief in Darfur, but calls on the Government to make a significantly greater commitment to aid the people of Darfur through appropriate international agencies;
- (e) notes that United Nations (UN) Security Council Resolution 1556 has imposed an arms embargo on Sudan and authorised the creation of an international protection force for Darfur;

- (f) calls on the Australian Government:
 - (i) in the event that this force does not succeed in preventing further armed attacks on the people of Darfur, to take immediate action at the UN to ensure that the UN force is given a mandate to disarm the militias, secure the withdrawal of Sudanese government forces from the area, protect the people of Darfur and enable all refugees to return to their homes,
 - (ii) to make a contribution, proportionate with Australia's military capacity, of Australian forces to any peace-keeping force dispatched to Sudan under a UN mandate, and
 - (iii) to take action at the UN to secure the prosecution for war crimes at the appropriate international tribunal of President Omar Bashir and other officials of the Sudanese military regime responsible for the massacres of civilians in Darfur; and
- (g) urges the Minister for Foreign Affairs (Mr Downer) to visit Sudan and gain a first-hand understanding of how Australia can most effectively contribute to the alleviation of this humanitarian crisis. (*general business notice of motion no. 973*)

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

- (a) acknowledges that violence against women has serious consequences for reproductive outcomes;
- (b) notes that:
 - (i) the Australian Longitudinal Study on Women's Health has found that young women with violent partners are more likely to become pregnant, miscarry, have a stillbirth, premature birth or an abortion than are women who do not have violent partners, and
 - (ii) the Women's Safety Australia study found that 42 per cent of women who reported physical violence from a partner experienced that violence during pregnancy, with half of these women stating that violence occurred for the first time while they were pregnant; and
- (c) calls on the Government to:
 - (i) provide funding to raise awareness of the links between violence and pregnancy and to train primary health care professionals to routinely assess pregnant women for possible exposure to violence, and
 - (ii) improve systems of care for pregnant women who are experiencing partner violence. (*general business notice of motion no. 974*)

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

- (a) notes that:
 - (i) to date, 26 universities have announced that they will increase their higher education contribution scheme (HECS) fees, most of them by the full 25 per cent across all disciplines,
 - (ii) increasing HECS fees will further deter students from low socio-economic backgrounds,
 - (iii) all three South Australian universities will increase HECS fees by 25 per cent in 2005, severely affecting student choice in South Australia, and

(iv) by 2008, the Government's policy 'Backing Australia's Future: Our Universities' will have shifted more than \$1.2 billion of the costs of higher education to students through HECS fee increases and increases in domestic full-fee paying student numbers; and

(b) condemns the Government for under-funding universities for the past 8 years to such an extent that universities are now turning to students to provide a short-term increase in funding. (*general business notice of motion no. 975*)

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

(a) notes that, on 19 August 2004, there will be national action by university students who will be protesting against the Government's 'Backing Australia's Future: Our Universities' policy and, in particular, against higher education contribution scheme (HECS) fee increases and the under-funding of universities;

(b) supports students in their non-violent attempts to seek the repeal of HECS fee increases and increased public funding for education; and

(c) condemns the Government for under-funding universities for the past 8 years, to such an extent that universities are now turning to students to provide a short-term increase in funding. (*general business notice of motion no. 976*)

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 Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004, allowing it to be considered during this period of sittings.

Document: Senator Ian Campbell tabled the following document:

Consideration of legislation—Statement of reasons for introduction and passage of the Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004 in the 2004 spring sittings.

13 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 11 OF 2004

The Chair of the Selection of Bills Committee (Senator Ferris) tabled the following report:

SELECTION OF BILLS COMMITTEE

REPORT NO. 11 OF 2004

1. The committee met on Tuesday, 10 August 2004.
2. The committee resolved to recommend—That the following bills *not* be referred to committees:
 - Australian Passports Bill 2004
 - Australian Passports (Application Fees) Bill 2004
 - Australian Passports (Transitionals and Consequentials) Bill 2004
 - Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004
 - Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004
 - Parliamentary Service Amendment Bill 2004
 - Trade Practices Legislation Amendment Bill 2004.

The committee recommends accordingly.

3. The committee considered a proposal to refer the *provisions* of the Higher Education Legislation Amendment Bill (No. 3) 2004 to the Employment, Workplace Relations and Education Legislation Committee, but was unable to reach agreement on whether the bill should be referred.
4. The committee *deferred* consideration of the following bills to the next meeting:

Bill deferred from meeting of 10 February 2004

Racial and Religious Hatred Bill 2003 [No. 2].

Bill deferred from meeting of 23 March 2004

Resale Royalty Bill 2004.

Bill deferred from meeting of 30 March 2004

Flags Amendment (Eureka Flag) Bill 2004.

Bill deferred from meeting of 22 June 2004

Renewable Energy Amendment (Increased MRET) Bill 2004.

Bill deferred from meeting of 10 August 2004

Criminal Code Amendment (Workplace Death and Serious Injury) Bill 2004.

Jeannie Ferris
Chair
11 August 2004.

Senator Ferris moved—That the report be adopted.

Senator Carr moved the following amendment:

At the end of the motion, add “and, in respect of the Higher Education Legislation Amendment Bill (No. 3) 2004, the provisions of the bill be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry, with a public hearing on 19 August 2004, and report by 2 September 2004”.

Debate ensued.

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

Main question, as amended, put and passed.

14 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION

Leave refused: The Minister for the Environment and Heritage (Senator Ian Campbell) sought leave to move a motion relating to the hours of meeting and routine of business for today.

An objection was raised and leave was not granted.

Suspension of standing orders: Senator Ian Campbell, at the request of the Leader of the Government in the Senate (Senator Hill) and pursuant to contingent notice, moved—That so much of the standing orders be suspended as would prevent Senator Hill moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion to vary the hours of meeting and routine of business for today.

Debate ensued.

Question put.

The Senate divided—

AYES, 46

Senators—

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

NOES, 11

Senators—

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

Question agreed to.

Senator Ian Campbell, at the request of Senator Hill, moved—That a motion to vary the hours of meeting and routine of business for today may be moved immediately and have precedence over all other business today till determined.

Debate ensued.

Question put and passed.

Senator Ian Campbell moved—That, on Wednesday, 11 August 2004:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm, and 7.30 pm to 12.40 am;
- (b) the routine of business from 7.30 pm shall be the US Free Trade Agreement Implementation Bill 2004 and a related bill; and
- (c) the question for the adjournment of the Senate shall be proposed at midnight.

Debate ensued.

Question put.

The Senate divided—

AYES, 47

Senators—

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

NOES, 9

Senators—

Allison (Teller)
Bartlett
BrownGreig
LeesMurray
NettleRidgeway
Stott Despoja

Question agreed to.

15 POSTPONEMENTS

Items of business were postponed as follows:

General business notice of motion no. 959 standing in the name of Senator Harris for today, proposing the establishment of a select committee on the commercial ‘rape’ of small business by Telstra, postponed till 1 September 2004.

16 ENVIRONMENT—NUCLEAR WASTE STORAGE—ORDER FOR PRODUCTION OF DOCUMENTS

Senator Allison, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 967—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.

Question put and passed.

17 FOREIGN AFFAIRS—THAILAND—HUMAN RIGHTS

Senator Allison, at the request of Senator Ridgeway, also on behalf of Senator Stott Despoja, amended general business notice of motion no. 960 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

(a) notes that:

- (i) Burmese refugees in Thailand may be increasingly at risk as a result of a curtailment in the activities of non-government organisations (NGOs) working on the Thai-Burma border, and
- (ii) 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) calls on the SPDC to:

- (i) end the human rights abuses being carried out on a systematic basis by the Burmese military, and
- (ii) immediately release Aung San Suu Kyi and her deputy Tin Oo, who remain under house arrest;

(c) urges the relevant governments to:

- (i) facilitate the activities of NGOs working to assist the refugees, and
- (ii) not allow the deportation of Burmese asylum seekers and refugees where there is a risk to their physical safety; and

- (d) calls on the Australian Government to:
 - (i) respond to the appeals from the United Nations High Commissioner for Refugees to provide, within the annual offshore refugee and humanitarian intake, 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.

Question put and passed.

18 INDIGENOUS AUSTRALIANS—INTERNATIONAL DAY OF THE WORLD'S INDIGENOUS PEOPLES

Senator Allison, at the request of Senator Ridgeway, amended general business notice of motion no. 966 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—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, 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.

Question put and passed.

19 ELECTORAL MATTERS—JOINT STANDING COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Ferris, at the request of Senator Mason and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 964—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.

Question put and passed.

20 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Ferris, at the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 965—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.

Question put and passed.

21 SCRUTINY OF BILLS—STANDING COMMITTEE—10TH REPORT AND ALERT DIGEST NO. 10 OF 2004

The Chairman of the Standing Committee for the Scrutiny of Bills (Senator Marshall) tabled the following report and document:

Scrutiny of Bills—Standing Committee—

10th report of 2004, dated 11 August 2004.

Alert Digest No. 10 of 2004, dated 11 August 2004.

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

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

Senator Ferris, at the request of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee (Senator Eggleston), tabled additional information received by the committee (Additional estimates 2003-04—vol. 5).

23 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—REPORT—REVIEW OF THE DEFENCE ANNUAL REPORT 2002-03

Senator Ferris, at the request of the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade (Senator Ferguson), tabled the following report:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Review of the Defence Annual Report 2002-03—Report, dated August 2004.

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

Question put and passed.

24 PUBLIC WORKS—JOINT STATUTORY COMMITTEE—3RD AND 4TH REPORTS OF 2004

Senator Ferris, on behalf of the Parliamentary Standing Committee on Public Works, tabled the following reports:

Public Works—Joint Statutory Committee—

3rd report of 2004—Proposed mid-life upgrade of existing Chancery building for the Australian High Commission, Wellington, New Zealand, dated August 2004.

4th report of 2004—Proposed provision of facilities for Headquarters Joint Operations Command, NSW, dated August 2004.

Senator Ferris moved—That the Senate take note of the reports.

Question put and passed.

25 PUBLIC ACCOUNTS AND AUDIT—JOINT STATUTORY COMMITTEE—401ST REPORT

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

Public Accounts and Audit—Joint Statutory Committee—401st report—Annual report 2003-04, dated August 2004.

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

Question put and passed.

26 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—DOCUMENT

The Minister for the Environment and Heritage (Senator Ian Campbell) tabled the following document:

Parliament Act—Parliamentary Zone—Proposal, together with supporting documentation, relating to the construction of permanent access ramps at the rear of Old Parliament House.

Notice of motion: Senator Ian Campbell, by leave, gave a notice of motion as follows: To move on the next day of sitting—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 construction of permanent access ramps at the rear of Old Parliament House.

27 ENVIRONMENT—REPULSE BAY—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Minister for the Environment and Heritage (Senator Ian Campbell), by leave, made a statement relating to the order of the Senate of 10 August 2004 for the production of documents concerning Repulse Bay and the Great Barrier Reef Marine Park Authority (*see entry no. 13, 10 August 2004*).

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

Question put and passed.

28 AUSTRALIAN PARLIAMENTARY DELEGATION TO THAILAND, VIETNAM AND CAMBODIA—DOCUMENT

Senator Scullion, by leave, tabled the following document:

Thailand, Vietnam and Cambodia—Report of the Australian parliamentary delegation, 8 to 23 November 2003, dated August 2004.

29 DOCUMENTS

The following documents were tabled by the Clerk:

Australian Bureau of Statistics Act—Proposal No. 10 of 2004.

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part—

105, dated 25 June; and 5, 13 [11], 14 [2], 20, 21 [8], 22 and 23 [5] July 2004.

106, dated 5, 9 [2], 14, 19 and 20 July 2004.

107, dated 15 and 20 July 2004.

Customs Act—Approval No. TMRO 2004/1.

Fuel Quality Standards Act—Fuel Quality Standards Amendment Determination 2004 (No. 1).

**30 HIGHER EDUCATION LEGISLATION AMENDMENT BILL (NO. 3) 2004
ELECTORAL AND REFERENDUM AMENDMENT (PRISONER VOTING AND OTHER MEASURES) BILL 2004**

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

Message no. 664, dated 10 August 2004—A Bill for an Act to amend higher education legislation, and for related purposes.

Message no. 665, dated 10 August 2004—A Bill for an Act to amend the law relating to elections and referendums, and for related purposes.

The Minister for Communications, Information Technology and the Arts (Senator Coonan) 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 Coonan moved—That these bills 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.

Senator Coonan moved—That the bills be listed on the *Notice Paper* as separate orders of the day.

Question put and passed.

31 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE—REPORT—COMMONWEALTH FUNDING FOR SCHOOLS

Pursuant to order, Senator Carr, at the request of the Chair of the Employment, Workplace Relations and Education References Committee (Senator George Campbell), tabled the following report and documents:

Employment, Workplace Relations and Education References Committee—Commonwealth funding for schools—Report, dated August 2004, *Hansard* record of proceedings, documents presented to the committee, answers to questions on notice, additional information and submissions [77].

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

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

Debate ensued.

Question put and passed.

32 ECONOMICS LEGISLATION COMMITTEE—REPORT—TAX LAWS AMENDMENT (WINE PRODUCER REBATE AND OTHER MEASURES) BILL 2004

Pursuant to order, Senator Scullion, at the request of the Chair of the Economics Legislation Committee (Senator Brandis), tabled the following report and documents:

Economics Legislation Committee—Provisions of the Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004—Report, dated August 2004, *Hansard* record of proceedings and submissions [3].

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

33 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REPORT—CRIMES LEGISLATION AMENDMENT (TELECOMMUNICATIONS OFFENCES AND OTHER MEASURES) BILL (NO. 2) 2004

Pursuant to order, Senator Scullion, at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne), tabled the following report and documents:

Legal and Constitutional Legislation Committee—Provisions of the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004—Report, dated August 2004, *Hansard* record of proceedings and submissions [5].

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

34 **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.

Senator Nettle moved the following amendment:

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

4 Reservation to agreement

- (1) Before the entry into force of the Australia-United States Free Trade Agreement (the *Agreement*), the Commonwealth is required by this section to make a reservation or interpretive declaration in the terms set out in subsections (2) to (10).

Pharmaceutical Benefits Scheme

- (2) Nothing in the Agreement is contrary to, or is to be interpreted in a way which undermines the objectives of, the National Medicines Policy and in particular the first objective of that Policy which is to ensure timely access to the medicines that Australians need, at a cost individuals and the community can afford.
- (3) Nothing in the Agreement is contrary to, or is to be interpreted in a way which undermines, the *Declaration on the TRIPS agreement and public health* adopted at the Ministerial Conference of the World Trade Organization at Doha on 14 November 2001.

Note: TRIPS refers to the Trade-Related Aspects of Intellectual Property Rights Agreement.

- (4) Article 17.10.4 of the Agreement must not be interpreted so as to permit the practice of “evergreening” brand name pharmaceutical products.
- (5) For the purposes of subsection (4), *evergreening* means the practice whereby a brand-name manufacturer stockpiles patent protection, for the purpose of extending the period of time for which patent protection is granted, by obtaining separate patents on multiple attributes of a single product.
- (6) The review process set out in Article 2(f) of annex 2-C of the Agreement is to be interpreted as referring to a process which is not binding.

Environment and health laws

- (7) Annex 11-B of the Agreement is to be interpreted so that regulatory actions by the Commonwealth, a State or a local government, designed and applied to achieve legitimate public welfare objectives, including the protection of public health, safety, or the environment, will not constitute indirect expropriations.

- (8) Under Article 11.16 of the Agreement, consultations on investor-state dispute settlement, on any matter, will not include arbitration between an investor and a party.

Local content

- (9) Nothing in the Agreement is contrary to, or is to be interpreted as infringing, Australia's right to ensure local content in broadcasting and audiovisual services, including new media formats, at or above the standard specified in section 9 of the *Broadcasting Services (Australian Content) Standard 1999* or section 5 of the *Television Program Standard 23—Australian Content in Advertising* as in force on 4 August 2004.

Note 1: Section 9 of the *Broadcasting Services (Australian Content) Standard 1999* deals with quotas for Australian television programs.

Note 2: Section 5 of the *Television Program Standard 23—Australian Content in Advertising* deals with quotas for Australian television advertisements.

Quarantine

- (10) The Committee on Sanitary and Phytosanitary Matters established under Article 7.4 of the Agreement and the Standing Technical Working Group on Animal and Plant Health Measures established under Annex 7-A of the Agreement will adopt the precautionary principle when assessing bilateral animal and plant health matters, notwithstanding Article 4(a) of Annex 7-A of the Agreement.

Disallowance

- (11) 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*.
- (12) The minister must cause the terms of the reservation or interpretive declaration required by subsection (1) to be tabled in both Houses of the Parliament not later than two sitting weeks before the Commonwealth signs the Agreement.
- (13) The reservation or interpretive declaration required by subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 9

Senators—

Allison (Teller)
Brown
Cherry

Greig
Harris

Lees
Murray

Nettle
Ridgeway

NOES, 44

Senators—			
Barnett	Ferguson	Ludwig	Payne
Bishop	Fifield	Lundy	Ray
Brandis	Forshaw	Macdonald, Sandy	Santoro
Buckland	Hill	Mackay	Scullion
Chapman	Hogg	Marshall	Sherry
Colbeck	Humphries	Mason	Stephens
Collins	Hutchins	McGauran	Tchen
Conroy	Johnston	McLucas	Troeth
Crossin	Kirk	Moore	Watson
Eggleston (Teller)	Knowles	O'Brien	Webber
Evans	Lightfoot	Patterson	Wong

Question negatived.

Senator Harradine, by leave, indicated that he would have voted for the ayes.

Question—That the bill be agreed to—divided in respect of Schedule 1, item 8, section 214BAF.

Schedule 1, item 8, section 214BAF debated.

On the motion of Senator Nettle further consideration of Schedule 1, item 8, section 214BAF was postponed.

Question—That the bill be agreed to—divided in respect of Schedules 1, 2, 3, 4, 6 and 8.

Schedules 1, 2, 3, 4, 6 and 8 debated.

Question—That Schedules 1, 2, 3, 4, 6 and 8 stand as printed—put.

The committee divided—

AYES, 46

Senators—			
Barnett	Ellison	Kirk	Patterson
Bishop	Evans	Knowles	Ray
Boswell	Ferguson	Ludwig	Santoro
Brandis	Ferris (Teller)	Lundy	Scullion
Buckland	Fifield	Macdonald, Sandy	Sherry
Carr	Forshaw	Mackay	Stephens
Chapman	Heffernan	Marshall	Tchen
Colbeck	Hill	Mason	Watson
Collins	Hogg	McGauran	Webber
Conroy	Humphries	McLucas	Wong
Crossin	Hutchins	Moore	
Eggleston	Johnston	O'Brien	

NOES, 9

Senators—			
Allison (Teller)	Greig	Harris	Nettle
Brown	Harradine	Murray	Ridgeway
Cherry			

Schedules agreed to.

Question—That the bill be agreed to—divided in respect of Schedule 5.

Schedule 5 debated.

Question—That Schedule 5 stand as printed—put.

The committee divided—

AYES, 44

Senators—

Barnett	Evans	Johnston	Patterson
Bishop	Faulkner	Kirk	Ray
Brandis	Ferguson	Knowles	Santoro
Buckland	Ferris (Teller)	Ludwig	Scullion
Carr	Fifield	Lundy	Sherry
Chapman	Forshaw	Mackay	Stephens
Colbeck	Heffernan	Marshall	Tchen
Collins	Hill	Mason	Troeth
Conroy	Hogg	McLucas	Watson
Crossin	Humphries	Moore	Webber
Eggleston	Hutchins	O'Brien	Wong

NOES, 9

Senators—

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

Schedule agreed to.

Bill further debated.

The Minister for Defence (Senator Hill) moved the following amendments together by leave:

Clause 2, page 4 (at the end of the table), add:

21. Schedule 10 The day on which this Act receives
the Royal Assent.

Page 163 (after line 27), at the end of the bill, add:

Schedule 10—Broadcasting amendments

Broadcasting Services Act 1992

1 At the end of section 122

Add:

- (5) The ABA must ensure that, at all times after the commencement of this subsection, there is in force under subsection (1) a standard that is, or has the same effect as, the standard in section 9 of the *Broadcasting Services (Australian Content) Standard 1999* as in force on 4 August 2004.

Note: Section 9 of the *Broadcasting Services (Australian Content) Standard 1999* deals with quotas for Australian television programs.

- (6) The ABA must ensure that, at all times after the commencement of this subsection, there is in force under subsection (1) a standard that is, or has the same effect as, the standard in section 5 of *Television Program Standard 23—Australian Content in Advertising* as in force on 4 August 2004.

Note: Section 5 of *Television Program Standard 23—Australian Content in Advertising* deals with quotas for Australian television advertisements.

Explanatory memorandum: Senator Hill tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Debate ensued.

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

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

Question put and passed.

The Acting Deputy President (Senator Marshall) resumed the chair and the Temporary Chair of Committees reported that the committee had considered the bills, made progress and asked leave to sit again.

Ordered, on the motion of Senator Hill, that the committee have leave to sit again on the next day of sitting.

35 ADJOURNMENT

The Minister for Defence (Senator Hill) moved—That the Senate do now adjourn.

The Senate adjourned at 11.32 pm till Thursday, 12 August 2004 at 9.30 am.

36 ATTENDANCE

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

HARRY EVANS
Clerk of the Senate