

2004-05

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 32

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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 PETITION

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

From 451 petitioners, requesting that the Senate reject the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005.

3 NOTICES

The Minister for Family and Community Services (Senator Patterson): To move on the next day of sitting—That the second reading of the Superannuation Laws Amendment (Abolition of Surcharge) Bill 2005 be restored to the *Notice Paper* and be made an order of the day for a later hour.

Senator Brown: To move on the next day of sitting—That the Senate calls on the Government of the United States of America to immediately return Australian citizen, Mr David Hicks, to Australia. (*general business notice of motion no. 194*)

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

- (a) notes that Japan plans to increase its scientific whaling program; and
- (b) calls on the Australian Government to send a surveillance vessel to monitor the whale slaughter in Antarctic waters. (*general business notice of motion no. 195*)

4 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION

The Minister for Family and Community Services (Senator Patterson), by leave, moved—That on Thursday, 23 June 2005:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
- (b) 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;
- (c) the routine of business from not later than 4.30 pm shall be government business only;
- (d) divisions may take place after 4.30 pm; and
- (e) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below and any messages from the House of Representatives:

Migration Amendment (Detention Arrangements) Bill 2005

Tax Laws Amendment (2005 Measures No. 1) Bill 2005

Tax Laws Amendment (2005 Measures No. 2) Bill 2005

Criminal Code Amendment (Suicide Related Material Offences) Bill 2005

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2005

Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005

Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005
Shortfall Interest Charge (Imposition) Bill 2005
Superannuation Bill 2005
Superannuation (Consequential Amendments) Bill 2005
Family Law Amendment Bill 2005
Appropriation (Parliamentary Departments) Bill (No. 1) 2005-2006
Appropriation Bill (No. 1) 2005-2006
Appropriation Bill (No. 2) 2005-2006
Appropriation Bill (No. 5) 2004-2005
Appropriation Bill (No. 6) 2004-2005.

Question put and passed.

5 PROCEDURE—STANDING COMMITTEE—REFERENCE

Senator Marshall, 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 proposed amendments to the standing orders be referred to the Procedure Committee for inquiry and report:

- (1) That standing order 74(5) be amended by omitting “and does not” and substituting “or if a question taken on notice during a hearing of a legislation committee considering estimates remains unanswered 30 days after the day set for answering the question, and a minister does not”.
- (2) That standing order 164 be amended by adding:
 - “(3) If a minister does not comply with an order for the production of documents, directed to the minister, within 30 days after the date specified for compliance with the order, and does not, within that period, provide to the Senate an explanation of why the order has not been complied with which the Senate resolves is satisfactory:
 - (a) at the conclusion of question time on each and any day after that period, a senator may ask the relevant minister for such an explanation; and
 - (b) the senator may, at the conclusion of the explanation, move without notice – That the Senate take note of the explanation; or
 - (c) in the event that the minister does not provide an explanation, the senator may, without notice, move a motion in relation to the minister’s failure to provide either an answer or an explanation.”.

Question put and passed.

6 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—PROPOSED REFERENCE

Senator Greig, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 2—That the Senate—

- (a) recalls that on 2 December 2002 and 7 December 2004 it referred a proposed agreement between Australia and the United States of America (US), pursuant to which Australia would agree not to surrender US nationals to the International Criminal Court without the consent of the US (the proposed agreement) to the Joint Standing Committee on Treaties for inquiry and report, and that this reference was reiterated on 30 August 2004;

- (b) notes that, despite the clear will of the Senate, the Joint Standing Committee on Treaties continues to refuse to commence any inquiry until such time as the proposed agreement has been finalised;
- (c) further notes that:
 - (i) the Government has indicated that its negotiations with the US for the proposed agreement are ongoing and that a model agreement has been circulated,
 - (ii) the US has entered into at least 95 such agreements with other nation states, and
 - (iii) there is widespread evidence regarding these agreements, including various legal opinions;
- (d) expresses the view that, given the significance of such an agreement, it is desirable for the Parliament to consider its implications before it is negotiated to completion, rather than after; and
- (e) refers the proposed agreement to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 30 October 2005, with particular reference to the following matters:
 - (i) whether the proposed agreement would breach the terms, or be otherwise inconsistent with the spirit, of the Rome Statute which Australia has ratified,
 - (ii) the effect of the proposed agreement, either itself or in conjunction with similar agreements between the US and other states, on the ability of the International Criminal Court to effectively fulfil its intended function,
 - (iii) the implications of any extradition provisions in the proposed agreement and whether the proposed agreement would require the re-negotiation of existing extradition agreements to which Australia is a party, and
 - (iv) the implications of the proposed agreement with respect to Australia's national interest.

Question put and negatived.

7 IMMIGRATION—MS CORNELIA RAU—ORDER FOR PRODUCTION OF DOCUMENT

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 192—That there be laid on the table by the Minister for Immigration and Multicultural and Indigenous Affairs a copy of the final report, including findings and recommendations, by Mr Mick Palmer into the Ms Cornelia Rau matter, no later than 3 calendar days after the Minister receives the report and, if the Senate is not sitting at that time, the report be presented to the President in accordance with standing order 166.

Question put and passed.

8 NORTHERN TERRITORY ELECTION—AUSTRALIAN LABOR PARTY

Senator Crossin amended general business notice of motion no. 183 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes the outcome of the election in the Northern Territory on Saturday, 18 June 2005, being a landslide victory to the Australian Labor Party (ALP) with a swing of at least 12 per cent;
- (b) acknowledges the election of another two Indigenous people to an Australian Parliament, Ms Alison Anderson and Ms Barbara McCarthy;

- (c) notes the comments from Senator Scullion that this was a ‘political tsunami’ for the Country Liberal Party; and
- (d) congratulates Chief Minister Clare Martin and the ALP on being re-elected for another term.

Question put and passed.

**9 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES
COMMITTEE—REFERENCE**

Senator Bartlett, at the request of Senator Murray and pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 3—That the following matter be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 31 October 2005:

Whether the objectives of various forms of industrial agreement-making, including Australian Workplace Agreements, are being met and whether the agreement-making system, including proposed federal government changes, meets the social and economic needs of all Australians, with particular reference to:

- (a) the scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive agreements;
- (b) the capacity for employers and employees to choose the form of agreement-making which best suits their needs;
- (c) the parties’ ability to genuinely bargain, focusing on groups such as women, youth and casual employees;
- (d) the social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities;
- (e) the capacity of the agreement to contribute to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards; and
- (f) Australia’s international obligations.

Question put and passed.

**10 TRANSPARENT ADVERTISING AND NOTIFICATION OF PREGNANCY COUNSELLING
SERVICES BILL 2005**

Senator Stott Despoja, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 173—That the following bill be introduced:

A Bill for an Act to prohibit misleading or deceptive advertising or notification of pregnancy counselling services, and for related purposes.

Question put and passed.

Senator Stott Despoja 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 Stott Despoja moved—That this bill be now read a second time.

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

**11 MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY AMENDMENT
(MARITIME SECURITY GUARDS AND OTHER MEASURES) BILL 2005
MARITIME LEGISLATION AMENDMENT BILL 2005
HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES NO. 3)
BILL 2005
CIVIL AVIATION LEGISLATION AMENDMENT (MUTUAL RECOGNITION WITH NEW
ZEALAND) BILL 2005
BROADCASTING LEGISLATION AMENDMENT BILL (NO. 1) 2005
ARTS LEGISLATION AMENDMENT (MARITIME MUSEUM AND FILM, TELEVISION
AND RADIO SCHOOL) BILL 2005
ACTS INTERPRETATION AMENDMENT (LEGISLATIVE INSTRUMENTS) BILL 2005**

The Minister for Family and Community Services (Senator Patterson), at the request of the Minister for Justice and Customs (Senator Ellison) and pursuant to notices of motion not objected to as formal motions, moved government business notices of motion nos 1 to 7—That the following bills be introduced:

A Bill for an Act to amend the law relating to the security of maritime transport and offshore facilities, and for related purposes.

A Bill for an Act to amend maritime legislation, and for related purposes.

A Bill for an Act to amend legislation relating to higher education, and for related purposes.

A Bill for an Act to amend the law relating to aviation, and for related purposes.

A Bill for an Act to amend the law relating to broadcasting, and for related purposes.

A Bill for an Act to amend the law relating to the arts, and for related purposes.

A Bill for an Act to amend the *Acts Interpretation Act 1901*, and for related purposes.

Question put and passed.

Senator Patterson presented the bills and 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 Patterson moved—That these bills be now read a second time.

Explanatory memoranda: Senator Patterson tabled explanatory memoranda [7] relating to the bills.

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

Question put and passed.

12 EDUCATION—MONASH UNIVERSITY—STUDENT ASSOCIATION FEES

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 193—That the Senate—

- (a) notes:
- (i) that the students at Monash University Clayton Campus are due to boycott classes at the commencement of the second academic semester on 18 July 2005 in protest at the Government's intention to abolish compulsory student association fees,
 - (ii) the staff at Monash University Clayton Campus support the students' decision to boycott classes, and
 - (iii) this action is just one of numerous acts of protest being organised on campuses around Australia in order to demonstrate the depth of concern students and university staff feel at the threatened loss of democratic control of student services on campus that will result from the Government's moves to abolish compulsory student association fees;
- (b) congratulates Monash University students on their willingness to sacrifice their study time to defend their ability to collectively and democratically organise and preserve student services; and
- (c) calls on the Government to:
- (i) recognise the community-wide benefits that well-resourced student associations deliver in promoting campus democracy,
 - (ii) recognise the demonstrated inability of 'market forces' to provide the appropriate range of services students need when they need them, and
 - (iii) abandon plans to abolish compulsory student association fees.

Question put and passed.

13 CONSIDERATION OF LEGISLATION

The Minister for Family and Community Services (Senator Patterson), at the request of the Minister for Defence (Senator Hill) and pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 8—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Migration Amendment (Detention Arrangements) Bill 2005, allowing it to be considered during this period of sittings.

Question put and passed.

14 COMMUNITY AFFAIRS REFERENCES COMMITTEE—REPORT—SERVICES AND TREATMENT OPTIONS FOR PERSONS WITH CANCER

Pursuant to order, Senator Cook, at the request of the Chair of the Community Affairs References Committee (Senator Marshall), tabled the following report and documents:

Community Affairs References Committee—The cancer journey: Informing choice—The delivery of services and treatment options for persons with cancer—Report, dated June 2005, Hansard record of proceedings [7 vols], additional information and submissions [105].

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

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

Debate ensued.

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

15 COMMUNITY AFFAIRS REFERENCES COMMITTEE—REPORT—AGED CARE

Pursuant to order, the Chair of the Community Affairs References Committee (Senator Marshall) tabled the following report and documents:

Community Affairs References Committee—Quality and equity in aged care—Report, dated June 2005, Hansard record of proceedings [9 vols], additional information and submissions [243].

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

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

Debate ensued.

Time expired: The time for the consideration of committee reports expired.

Leave was granted for the time for the tabling and consideration of the remaining committee reports to be extended.

Debate continued.

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

16 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—ADDITIONAL INFORMATION—BUDGET AND ADDITIONAL ESTIMATES 2004-05—BUDGET ESTIMATES 2005-06

Senator Eggleston, at the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan), tabled additional information received by the committee (Budget estimates 2004-05—vols 1 and 2; Budget estimates 2004-05 (Supplementary)—vols 1 and 2; Additional estimates 2004-05—vol. 2; Budget estimates 2005-06—1 vol.).

17 PUBLICATIONS—STANDING COMMITTEE—4TH REPORT

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

PUBLICATIONS COMMITTEE**4TH REPORT**

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

The Committee, having considered documents presented to the Parliament since 14 June 2005, recommends that the following be printed:

Australian Maritime College—Report for 2004.

Australian National University—Report for 2004.

Higher Education Funding Act 1988—Report on determinations made under the Act in respect of 2003.

Human Rights and Equal Opportunity Commission—Report no. 30—Inquiry into a complaint by Mr William Mayne of age discrimination in the Australian Defence Force.

National Health and Medical Research Council—Report for 2004.

Natural Heritage Trust—Report for 2003-04.

Pharmaceutical Benefits Pricing Authority—Supplementary report for 2003-04 on the operations of the Authority in relation to the Pharmaceutical Industry Investment Program.

Senator John Watson
Chairman
23 June 2005.

Senator Eggleston moved—That the report be adopted.

Question put and passed.

18 REGULATIONS AND ORDINANCES—STANDING COMMITTEE—112TH REPORT

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen) tabled the following report:

Regulations and Ordinances—Standing Committee—112th report: 40th Parliament report, dated June 2005.

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

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

Debate ensued.

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

19 CORPORATIONS AND FINANCIAL SERVICES—JOINT STATUTORY COMMITTEE—REPORT—PROPERTY INVESTMENT ADVICE

The Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Chapman) tabled the following report and documents:

Corporations and Financial Services—Joint Statutory Committee—Property investment advice: Safe as houses?—Report, dated June 2005, Hansard record of proceedings and submissions [26].

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

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

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

20 NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND ACCOUNT—JOINT STATUTORY COMMITTEE—REPORT—EXAMINATION OF ANNUAL REPORTS 2003-04

Senator Eggleston, at the request of the Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account (Senator Johnston), tabled the following report and document:

Native Title and the Aboriginal and Torres Strait Islander Land Account—Joint Statutory Committee—Examination of annual reports 2003-04—Report, dated June 2005 and Hansard record of proceedings.

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

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

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

21 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE—REPORT—STUDENT INCOME SUPPORT

Pursuant to order, the Chair of the Employment, Workplace Relations and Education References Committee (Senator Crossin) tabled the following report and documents:

Employment, Workplace Relations and Education References Committee—Student income support—Report, dated June 2005, Hansard record of proceedings, documents presented to the committee, answers to questions on notice, additional information and submissions [140].

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

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

Debate ensued.

Question put and passed.

22 ECONOMICS LEGISLATION COMMITTEE—REPORT—TAX LAWS AMENDMENT (2005 MEASURES NO. 1) BILL 2005

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

Economics Legislation Committee—Tax Laws Amendment (2005 Measures No. 1) Bill 2005—Report, dated June 2005, Hansard record of proceedings and submissions [10].

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

23 COMMITTEES—CHANGES IN MEMBERSHIP

The Acting Deputy President (Senator Moore) informed the Senate that the President had received a letter requesting changes in the membership of various committees.

The Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald), by leave, moved—That senators be discharged from and appointed to committees as follows:

Environment, Communications, Information Technology and the Arts References Committee—

Discharged—Senator Cherry

Appointed—Senator Bartlett

Rural and Regional Affairs and Transport References Committee—

Discharged—Senator Ridgeway

Appointed—Senator Murray.

Question put and passed.

24 ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL 2005

A message from the House of Representatives was reported agreeing to the following bill without amendment:

Message no. 169, dated 22 June 2005—Environment and Heritage Legislation Amendment Bill 2005.

25 FAMILY LAW AMENDMENT BILL 2005

A message from the House of Representatives was reported agreeing to the following bill with amendments:

Message no. 170, dated 23 June 2005—Family Law Amendment Bill 2005.

On the motion of the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) consideration of the message in committee of the whole was made an order of the day for a later hour.

26 MIGRATION AMENDMENT (DETENTION ARRANGEMENTS) BILL 2005

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

Message no. 168, dated 22 June 2005—A Bill for an Act to amend the *Migration Act 1958*, and for related purposes.

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

Question put and passed.

Bill read a first time.

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

Debate ensued.

Senator Bartlett moved the following amendment:

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

- (a) while acknowledging that this bill may result in the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) deciding to release some people from detention, maintains its opposition to the principle of indefinite detention without charge and trial which remains in the *Migration Act 1958*; and
- (b) believes that temporary protection visas should be abolished and that the detainees on Nauru and Christmas Island should be brought to Australia immediately”.

Debate ensued.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 9

Senators—

Allison
Bartlett (Teller)
Brown

Cherry
Greig

Murray
Nettle

Ridgeway
Stott Despoja

NOES, 42

Senators—

Barnett	Coonan	Hutchins	O'Brien
Bishop	Crossin	Lees	Ray
Boswell	Denman	Lightfoot	Scullion
Brandis	Ellison	Ludwig	Sherry
Buckland	Ferris (Teller)	Lundy	Stephens
Campbell, George	Fierravanti-Wells	Macdonald, Ian	Tchen
Carr	Fifield	Macdonald, Sandy	Troeth
Chapman	Forshaw	Marshall	Vanstone
Colbeck	Heffernan	McGauran	Webber
Collins	Hogg	McLucas	
Conroy	Humphries	Moore	

Question negatived.

Senator Nettle moved the following amendment:

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

- (a) condemns the Government for:
 - (i) its failure to humanely and compassionately manage the claims of people seeking asylum in Australia,
 - (ii) presiding over an immigration detention regime that has in many cases mentally and physically damaged those detained,
 - (iii) allowing a culture of ‘fanatical zeal’ to thrive in the Department of Immigration and Multicultural and Indigenous Affairs that has resulted in numerous wrongful detentions and at least one wrongful deportation,
 - (iv) its failure to abide by the international conventions relating to the treatment of children,
 - (v) its refusal to take responsibility for the wrongful detention and deportation of Australian citizens, and
 - (vi) its failure to monitor the status of failed asylum seekers deported from Australia to nations with established records of human rights abuses; and
- (b) calls on the Government to:
 - (i) issue permanent residency visas to all refugees currently residing in Australia on temporary protection visas,
 - (ii) bring all the remaining detainees on Nauru to Australia and grant them permanent residency visas,
 - (iii) close the immigration detention camps on Nauru and Manus Island,
 - (iv) abolish the policy of unlimited mandatory detention of asylum seekers,
 - (v) return Australia to a system of processing asylum seekers in the community after standard security and health checks have been completed,
 - (vi) permanently close the desert detention camps, and
 - (vii) cease the policy of forced deportation of failed asylum seekers to nations with established records of human rights abuses”.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 9

Senators—

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

NOES, 35

Senators—

Barnett	Conroy	Hogg	Scullion
Bishop	Crossin	Humphries	Sherry
Boswell	Denman	Hutchins	Stephens
Brandis	Ellison	Ludwig	Tchen
Buckland	Ferris (Teller)	Lundy	Troeth
Campbell, George	Fierravanti-Wells	Marshall	Vanstone
Carr	Fifield	McLucas	Webber
Colbeck	Forshaw	Moore	Wong
Collins	Heffernan	O'Brien	

Question negatived.

Main question put and passed.

Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

Senator Brown moved the following amendment:

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

4 MOU etc. relating to detention, refugee immigration etc. centres not to be made

- (1) The Executive Government of the Commonwealth has no power to enter into any form of agreement, memorandum of understanding or arrangement, however expressed, relating to a detention, migration or refugee facility, however described or established, except as provided for by the Parliament.
- (2) Where the Executive Government of the Commonwealth has entered into an agreement, memorandum of understanding or arrangement, however expressed, relating to a detention, migration or refugee facility, however described or established, prior to the commencement of this Act, that agreement, memorandum of understanding or arrangement ceases to have effect after 1 July 2005.

Debate ensued.

At 2 pm: The Acting Deputy President (Senator Lightfoot) resumed the chair and the Temporary Chair of Committees (Senator Sandy Macdonald) reported progress.

27 QUESTIONS

Questions without notice were answered.

28 ANSWERS TO QUESTIONS

Senator Sherry moved—That the Senate take note of the answers given by the Minister for Finance and Administration (Senator Minchin) and the Special Minister of State (Senator Abetz) to questions without notice asked by Senators Sherry, George Campbell and Wong today.

Debate ensued.

Question put and passed.

29 EDUCATION—COMPULSORY UNIVERSITY FEES—ANSWER TO QUESTION

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 compulsory university fees.

Question put and passed.

30 OPPOSITION DEPUTY WHIP—APPOINTMENT

Senator George Campbell, by leave, informed the Senate of the appointment of Senator Kirk as Opposition Deputy Whip from 1 July 2005.

31 LEADER OF THE NATIONALS—RETIREMENT—STATEMENT BY LEAVE

The Leader of The Nationals in the Senate (Senator Boswell), by leave, made a statement relating to the retirement of the Leader of The Nationals (Mr Anderson).

32 COMMITTEES—CHANGES IN MEMBERSHIP

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

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), by leave, moved—

- (1) That senators be discharged from and appointed to committees as follows:

Economics References Committee—

Discharged—Senator Ridgeway

Appointed—

Senator Murray

Substitute member: Senator Allison to replace Senator Murray for matters relating to the Resources portfolio

Finance and Public Administration References Committee—

Discharged—Senator Ridgeway

Appointed—

Senator Murray

Substitute member: Senator Bartlett to replace Senator Murray for the committee's inquiry into the Gallipoli Peninsula

Foreign Affairs, Defence and Trade References Committee—

Discharged—Senator Ridgeway

Appointed—

Senator Stott Despoja

Substitute member: Senator Bartlett to replace Senator Stott Despoja for the committee's inquiries into the duties of Australian personnel in Iraq and the Chen Yonglin and Vivian Solon cases

Legal and Constitutional Legislation Committee—

Discharged—Senator Greig

Appointed—

Senator Bartlett

Substitute member: Senator Stott Despoja to replace Senator Bartlett for matters relating to the Attorney-General's portfolio

Legal and Constitutional References Committee—

Discharged: Senator Greig

Appointed: Senator Bartlett.

- (2) That senators be discharged from and appointed to committees, with effect from 1 July 2005, as follows:

Australian Crime Commission—Joint Statutory Committee—

Discharged: Senator Hutchins

Appointed: Senators Ludwig and Polley

Community Affairs Legislation Committee—

Appointed—

Senators Adams and Polley

Participating members: Senators Bartlett, McEwen and Wong

Community Affairs References Committee—

Discharged—Senators Hutchins and Marshall

Appointed—

Senators Adams, Allison, McLucas and Polley

Participating members: Senators Bartlett, Lundy and Wong

Corporations and Financial Services—Joint Statutory Committee—

Discharged—Senator Lundy

Appointed—Senator Sherry

Economics Legislation Committee—

Appointed—Participating member: Senator Bartlett

Economics References Committee—

Appointed—Participating member: Senator Bartlett

Employment, Workplace Relations and Education Legislation Committee—

Discharged—Senator Wong

Appointed—

Senator George Campbell

Participating members: Senators McEwen and Wong

Employment, Workplace Relations and Education References Committee—

Discharged—Senators Crossin and Kirk

Appointed—

Senators George Campbell, McEwen and Marshall

Participating member: Senator Lundy

Environment, Communications, Information Technology and the Arts Legislation Committee—

Discharged—Senators Bartlett and Conroy

Appointed—

Senators Brown, Ronaldson and Wortley

Participating members: Senators Bartlett, Forshaw and Webber

**Environment, Communications, Information Technology and the Arts
References Committee—**

Discharged—Senator Bishop

Appointed—

Senators Ronaldson and Wortley

Participating members: Senators Forshaw, Moore and Webber

Finance and Public Administration Legislation Committee—

Discharged—Senators George Campbell and Heffernan

Appointed—

Senators Stephens and Fifield

Participating members: Senators Bartlett and Crossin

Finance and Public Administration References Committee—

Discharged—Senators George Campbell and Heffernan

Appointed—

Senators Stephens and Fifield

Participating member: Senator Bartlett

Foreign Affairs, Defence and Trade—Joint Standing Committee—

Discharged—Senator Lundy

Appointed—Senators George Campbell, Moore and Webber

Foreign Affairs, Defence and Trade Legislation Committee—

Appointed—Participating member: Senator Webber

Foreign Affairs, Defence and Trade References Committee—

Appointed—Participating members: Senators Bishop, Lundy, Marshall and Webber

Legal and Constitutional Legislation Committee—

Appointed—Senator Crossin

Legal and Constitutional References Committee—

Appointed—

Senators Crossin and Ludwig

Participating member: Senator Lundy

Library—Standing Committee—

Discharged—Senators Kirk and Stephens

Appointed—Senators McEwen, Polley and Trood

Migration—Joint Standing Committee—

Appointed—Senator Parry

Native Title and the Aboriginal and Torres Strait Islander Land Account—

Joint Statutory Committee—

Appointed—Senator Siewert

Privileges—Standing Committee—

Appointed—Senator Ronaldson

Public Works—Joint Statutory Committee—

Discharged—Senator Forshaw

Appointed—Senator Wortley

Publications—Standing Committee—

Discharged—Senators Hutchins, Kirk and Moore

Appointed—Senators Polley, Sterle and Wortley

Regulations and Ordinances—Standing Committee—

Discharged—Senators Marshall and Moore

Appointed—Senators Sterle, Watson and Wortley

Rural and Regional Affairs and Transport Legislation Committee—

Discharged—Senator Stephens

Appointed—

Senators McEwen, Milne and Sterle

Participating members: Senators Bartlett, Crossin and Stephens

Rural and Regional Affairs and Transport References Committee—

Discharged—Senator Stephens

Appointed—

Senators McEwen and Sterle

Participating members: Senators Bartlett, Lundy and Stephens

Scrutiny of Bills—Standing Committee—

Discharged—Senator Marshall

Appointed—Senator McEwen

Senators' Interests—Standing Committee—

Appointed—Senator McEwen

Treaties—Joint Standing Committee—

Discharged—Senator Stephens.

Appointed—Senators Sterle, Trood and Wortley.

Question put and passed.

33 PARLIAMENTARY RETIRING ALLOWANCES TRUST—APPOINTMENT OF TRUSTEE

The Deputy President (Senator Hogg) informed the Senate that the President had received a letter from the Leader of the Opposition in the Senate (Senator Evans) nominating Senator Faulkner to serve as a trustee on the Parliamentary Retiring Allowances Trust consequent on the retirement of Senator Cook.

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), by leave, moved—That, in accordance with the provisions of the *Parliamentary Contributory Superannuation Act 1948*, the Senate appoints Senator Faulkner as a trustee to serve on the Parliamentary Retiring Allowances Trust on and from 1 July 2005, consequent on the retirement of Senator Cook.

Question put and passed.

34 PARLIAMENTARY COMMITTEE REPORTS—PRESIDENT'S REPORT—GOVERNMENT RESPONSES OUTSTANDING

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

President's report to the Senate on government responses outstanding to parliamentary committee reports as at 23 June 2005.

35 AUDITOR-GENERAL—AUDIT REPORT NO. 55 OF 2004-05—DOCUMENT

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

Auditor-General—Audit report no. 55 of 2004-05—Performance audit—Workforce planning.

36 AUSTRALIAN PARLIAMENTARY DELEGATION TO THE RUSSIAN FEDERATION AND THE ITALIAN REPUBLIC—DOCUMENT

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

Russian Federation and the Italian Republic—Report of the Australian parliamentary delegation, 17 April to 1 May 2005, dated June 2005.

37 PARLIAMENTARY COMMITTEE REPORTS—GOVERNMENT RESPONSE—PRESIDENT'S REPORT ON GOVERNMENT RESPONSES

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled the following document:

Government responses to parliamentary committee reports—Response to the schedule tabled by the President of the Senate on 9 December 2004, dated 23 June 2005.

38 PARLIAMENTARIANS' TRAVEL COSTS—DOCUMENT

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled the following document:

Parliamentarians' travel paid by the Department of Finance and Administration—July to December 2004, dated June 2005.

39 FORMER PARLIAMENTARIANS' TRAVEL COSTS—DOCUMENT

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled the following document:

Former parliamentarians' travel paid by the Department of Finance and Administration—July to December 2004, dated June 2005.

40 PARLIAMENTARIANS' OVERSEAS STUDY TRAVEL—DOCUMENT

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled the following document:

Parliamentarians' overseas study travel reports—25 May to 31 December 2004, dated June 2005.

41 FORMER GOVERNORS-GENERAL TRAVEL COSTS—DOCUMENTS

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled the following documents:

Expenditure on travel by former Governors-General paid by the Department of the Prime Minister and Cabinet—2004—

1 January to 30 June.

1 July to 31 December.

42 TAXATION—DEDUCTIBLE GIFT RECIPIENT STATUS—ENVIRONMENT GROUPS—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), by leave, made a statement relating to the order of the Senate of 21 June 2005 for the production of documents concerning deductible gift recipient status of environment groups (*see entry no. 21, 21 June 2005*).

43 ENVIRONMENT—TASMANIA—PROPOSED PULP MILL—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), by leave, made a statement relating to the order of the Senate of 14 June 2005 for the production of documents concerning the proposed pulp mill in Tasmania (*see entry no. 20, 14 June 2005*).

Senator Brown, by leave, moved—That the Senate take note of the statement and the statement made earlier today (*see entry no. 42*).

Question put and passed.

44 DOCUMENTS

The following documents were tabled by the Clerk:

[*Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number*]

Australian Bureau of Statistics Act—Proposal No. 5 of 2005—Personal safety survey.

Australian Meat and Live-stock Industry Act—Australian Meat and Live-stock Industry (Export of Live-stock to Saudi Arabia) Order 2005 [F2005L01580]*.

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—

AD/B737/198 Amdt 1—Centre Tank Fuel Pumps [F2005L01573]*.

AD/B737/202 Amdt 1—Centre Fuel Tank Limitations [F2005L01572]*.

Financial Sector (Collection of Data) Act—Instruments exempting registered entities from reporting to APRA—

NPBS Securities Pty Limited [F2005L01534]*.

SWAN Securitisation Finance Pty Limited [F2005L01539]*.

Health Insurance Act—Select Legislative Instruments 2005 Nos—

128—Health Insurance Amendment Regulations 2005 (No. 3) [F2005L01451]*.

129—Health Insurance (General Medical Services Table) Amendment Regulations 2005 (No. 2) [F2005L01449]*.

Imported Food Control Act—Select Legislative Instrument 2005 No. 120—Imported Food Control Amendment Regulations 2005 (No. 1) [F2005L01503]*.

Migration Act—Select Legislative Instrument 2005 No. 133—Migration Amendment Regulations 2005 (No. 3) [F2005L01493]*.

Migration Act and Immigration (Education) Act—Select Legislative Instrument 2005 No. 134—Migration Amendment Regulations 2005 (No. 4) [F2005L01502]*.

* Explanatory statement tabled with legislative instrument.

45 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE—DOCUMENT—INDIGENOUS EDUCATION FUNDING

Senator Scullion, at the request of the Chair of the Employment, Workplace Relations and Education References Committee (Senator Crossin), tabled the following document:

Employment, Workplace Relations and Education References Committee—Indigenous education funding—Corrigendum.

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

46 CORPORATIONS AND FINANCIAL SERVICES—JOINT STATUTORY COMMITTEE—DOCUMENT—PROPERTY INVESTMENT ADVICE

Senator Scullion, at the request of the Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Chapman), tabled the following document:

Corporations and Financial Services—Joint Statutory Committee—Property investment advice: Safe as houses?—Erratum.

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

47 NATIONAL CAPITAL AND EXTERNAL TERRITORIES—JOINT STANDING COMMITTEE—REPORT—ADEQUACY OF FUNDING FOR AUSTRALIA'S ANTARCTIC PROGRAM

The Chair of the Joint Standing Committee on the National Capital and External Territories (Senator Lightfoot) tabled the following report:

National Capital and External Territories—Joint Standing Committee—Antarctica: Australia's pristine frontier: The adequacy of funding for Australia's Antarctic Program—Report, dated June 2005.

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

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

48 AUSTRALIAN CRIME COMMISSION—JOINT STATUTORY COMMITTEE—REPORT—AUSTRALIAN CRIME COMMISSION—REPORT FOR 2003-04

Senator Scullion, at the request of the Chair of the Parliamentary Joint Committee on the Australian Crime Commission (Senator Santoro), tabled the following report and documents:

Australian Crime Commission—Joint Statutory Committee—Examination of the annual report for 2003-04 of the Australian Crime Commission—Report, dated June 2005, Hansard record of proceedings and submissions [7].

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

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

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

49 LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE—REPORT—EFFECTIVENESS AND APPROPRIATENESS OF THE PRIVACY ACT 1988

The Chair of the Legal and Constitutional References Committee (Senator Bolkus) tabled the following report and documents:

Legal and Constitutional References Committee—The real Big Brother: Inquiry into the *Privacy Act 1988*—Report, dated June 2005, Hansard record of proceedings [3 vols], documents presented to the committee and submissions [49].

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

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

Debate ensued.

Question put and passed.

50 MIGRATION AMENDMENT (DETENTION ARRANGEMENTS) BILL 2005

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

In the committee

Consideration resumed of the bill—and of the amendment moved by Senator Brown (see entry no. 26).

Debate resumed.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 8

Senators—

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

NOES, 44

Senators—

Barnett	Crossin	Johnston	Murphy
Bishop	Denman	Kirk	Santoro
Boswell	Eggleston	Knowles	Scullion
Brandis	Faulkner	Lightfoot	Sherry
Buckland	Ferris (Teller)	Ludwig	Stephens
Campbell, George	Fierravanti-Wells	Lundy	Tchen
Carr	Fifield	Macdonald, Ian	Troeth
Chapman	Forshaw	Macdonald, Sandy	Vanstone
Colbeck	Hogg	Marshall	Watson
Collins	Humphries	McLucas	Webber
Coonan	Hutchins	Moore	Wong

Question negatived.

Bill further debated.

Senator Brown moved the following amendment:

Schedule 1, item 1, page 4 (line 9), at the end of subsection 4AA(1), add “and that before a decision is taken to detain a minor, or to continue to hold a minor child in detention, the best interests of the minor must be taken into account and any alternatives to detention considered”.

Debate ensued.

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

Senator Nettle moved the following amendment:

Schedule 1, page 4 (after line 28), after item 5, insert:

5A Subsection 5(1) (after paragraph (c) of the definition of *migration zone*)

Add:

and (d) any Australian-funded, controlled and operated detention, migration or refugee centre, whether operated by Commonwealth employees or on contract and wherever situated;

Debate ensued.

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

Senator Nettle moved the following amendment:

Schedule 1, page 5 (after line 3), after item 6, insert:

6A At the end of section 36

Add:

Protection visa to permit holder to remain in Australia permanently

- (8) A visa issued under this section shall permit the holder to remain in Australia permanently, despite any other provisions of this Act or of the regulations.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 7

Senators—

Allison	Brown	Murray	Stott Despoja
Bartlett (Teller)	Greig	Nettle	

NOES, 38

Senators—

Bishop	Crossin	Kirk	Ray
Brandis	Denman	Knowles	Sherry
Buckland	Ellison	Ludwig	Tchen
Calvert	Ferguson	Lundy	Troeth
Campbell, George	Ferris (Teller)	Marshall	Vanstone
Carr	Fierravanti-Wells	Mason	Watson
Chapman	Fifield	McLucas	Webber
Colbeck	Hogg	Moore	Wong
Collins	Humphries	O'Brien	
Coonan	Hutchins	Patterson	

Question negatived.

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

Schedule 1, page 5 (after line 19), after item 9, insert:

9A After section 194

Insert:

194A Independent medical access etc.

The Secretary must ensure that independent medical professionals and media representatives have access to a person detained under section 189 or 196.

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

Schedule 1, item 10, page 5 (line 26), after “189”, insert “or 196”.

Schedule 1, item 11, page 7 (line 9), after “189”, insert “or 196”.

Schedule 1, item 11, page 7 (line 28), after “189”, insert “or 196”.

Schedule 1, item 11, page 8 (line 2), after “189”, insert “or 196”.

Schedule 1, item 20, page 15 (line 5), after “189”, insert “or 196”.

Schedule 1, item 20, page 15 (line 10), after “189”, insert “or 196”.

Senator Ludwig moved the following amendment:

Schedule 1, item 10, page 6 (after line 7), after subsection 195A(4), insert:

Considerations to be taken into account in granting visas

- (4A) In exercising the power under subsection (2), the Minister must have regard to whether a person has a need for temporary protection or for permanent protection.
- (4B) If the Minister considers that a person has a need for temporary protection, the Minister may grant the person a visa for a period not exceeding two years. At the end of that period, unless the Secretary has presented evidence to the Minister that satisfies the Minister that the decision to grant a visa should be reversed, the Minister must grant a further visa permitting the person to remain in Australia indefinitely.
- (4C) If the Minister considers that a person has a need for permanent protection, the Minister must grant the person a visa permitting the person to remain in Australia indefinitely.
- (4D) If the Minister considers that a person does not have a need for permanent protection but considers that the person has made, and can continue to make, a long-term contribution to economic, social or community life, the Minister may grant a visa permitting the person to remain in Australia indefinitely.

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck) moved—That the committee report progress and ask leave to sit again.

Question put and passed.

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

Ordered, on the motion of Senator Colbeck, that the committee have leave to sit again at a later hour.

51 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck), by leave, moved—That—

- (a) the hours of meeting for Thursday, 23 June 2005, shall be 9.30 am to adjournment; and
- (b) the routine of business from 6.30 pm to 7.30 pm shall be second reading speeches only on the following bills:

Tax Laws Amendment (2005 Measures No. 1) Bill 2005

Tax Laws Amendment (2005 Measures No. 2) Bill 2005

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2005

Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005 and a related bill

Superannuation Bill 2005 and a related bill
Telecommunications Legislation Amendment (Regular Reviews and Other
Measures) Bill 2005.

Question put and passed.

At 6.30 pm—

52 TAX LAWS AMENDMENT (2005 MEASURES NO. 1) BILL 2005

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

Debate resumed.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck) the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

53 TAX LAWS AMENDMENT (2005 MEASURES NO. 2) BILL 2005

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

Debate resumed.

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

54 SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF SUPERANNUATION FUNDS) BILL 2005

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

Debate resumed.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck) the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

55 ORDER OF BUSINESS—REARRANGEMENT

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck) moved—That intervening business be postponed till after consideration of government business order of the day no. 7 (Superannuation Bill 2005 and a related bill).

Question put and passed.

**56 SUPERANNUATION BILL 2005
SUPERANNUATION (CONSEQUENTIAL AMENDMENTS) BILL 2005**

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

Debate resumed.

On the motion of the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

**57 TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT) BILL (NO. 1) 2005
SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005**

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

Debate resumed.

At 7.30 pm: Debate was interrupted while Senator Murphy was speaking.

58 MIGRATION AMENDMENT (DETENTION ARRANGEMENTS) BILL 2005

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

In the committee

Consideration resumed of the bill, as amended—and of the amendment moved by Senator Ludwig (see entry no. 50).

Debate resumed.

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

Senator Nettle moved the following amendments together by leave:

Schedule 1, page 7 (after line 3), after item 10, insert:

10A At the end of subsection 196(1)

Add:

; or (d) released from detention in accordance with section 196A or 196B.

Schedule 1, page 7 (after line 3), after item 10, insert:

10B Subsection 196(3)

After “doubt”, insert “and subject to sections 196A and 196B”.

Schedule 1, page 7 (after line 3), after item 10, insert:

10C Subsection 196(4)

Omit “and (c)”, substitute “, (c) and (d)”.

Schedule 1, page 7 (after line 3), after item 10, insert:

10D Subsection 196(4A)

Omit “and (c)”, substitute “, (c) and (d)”.

Schedule 1, page 7 (after line 3), after item 10, insert:

10E Subsection 196(5)

After “doubt”, insert “and subject to sections 196A and 196B”.

Schedule 1, page 7 (after line 3), after item 10, insert:

10F After section 196

Insert:

196A Detention of asylum seekers

- (1) This section applies to a person who is an unlawful non-citizen who:
 - (a) has applied for a visa under section 36 which has not been finally determined; or

- (b) has requested the Minister to:
 - (i) make a determination under section 48B; or
 - (ii) exercise the Minister's power under section 417;and has not received the decision of the Minister.
- (2) An officer may detain a person to whom this section applies if the officer has reasonable grounds to consider that detention is necessary in order to:
 - (a) verify the identify of the person; or
 - (b) assess the application; or
 - (c) protect public safety or welfare; or
 - (d) ensure that the person is immediately available for health checks; or
 - (e) ensure that the person is available for removal if his or her application is unsuccessful.
- (3) A person to whom this section applies who is detained must be given a written statement of the reasons for detention.
- (4) A person to whom this section applies who is detained may apply to the Federal Court for an order that he or she be released because there are no reasonable grounds to consider that detention is necessary for the reasons specified in subsection (2).
- (5) A person to whom this section applies may be detained for a period not exceeding 90 days unless the Federal Court makes an order under subsection (7), a further order under subsection (9) or an order under subsection (11) that the person must be kept in immigration detention.
- (6) The Secretary may apply to the Federal Court for an order under subsection (7), a further order under subsection (9) or an order under subsection (11) that a person to whom this section applies must be kept in immigration detention.
- (7) The Federal Court may make an order that a person to whom this section applies must be kept in immigration detention for a period not exceeding 90 days if the court is satisfied that it is necessary to do so in order to:
 - (a) verify the identity of the person; or
 - (b) assess the application; or
 - (c) protect public safety or welfare; or
 - (d) ensure that the person is immediately available for health checks; or
 - (e) ensure that the person is available for removal if his or her application is unsuccessful.
- (8) In considering whether it is necessary to detain a person to whom this section applies in order to assess the application or to ensure that the person is available for removal if his or her application is unsuccessful, the Federal Court must take into account the effectiveness and appropriateness of imposing conditions of release which would ensure that, should the person be released from detention, the person would be available for the assessment of the application for the visa or for removal if the application is unsuccessful.

- (9) If the Federal Court has made an order under subsection (7) or a further order under this subsection, that a person be detained for a further period specified in the order, at the end of that specified period the person must be released from immigration detention unless the court has made a further order under this subsection that the person must be kept in immigration detention, provided that a further order under this subsection must not order that the person be kept in immigration detention for a further period exceeding 90 days.
- (10) The Federal Court may order that a person who is released from detention must comply with reasonable conditions to ensure that he or she is available for the assessment of the application or for removal if the application is unsuccessful.
- (11) The Federal Court may order that a person who has not complied with conditions of release imposed by the court may be detained for a period which the court considers reasonable in the circumstances.
- (12) A person to whom this section applies who is released from detention must be granted a bridging visa which provides that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.

196B Detention of unsuccessful asylum seekers who are subject to removal

- (1) This section applies to a person who made a valid application, which has been finally determined, for a visa under section 36, and that application was unsuccessful. To avoid doubt, an application for a visa under section 36 does not include a request to the Minister to make a determination under section 48B or to exercise the Minister's powers under section 417.
- (2) An officer may detain a person to whom this section applies if the officer has reasonable grounds to consider that detention is necessary in order to:
 - (a) protect public safety or welfare; or
 - (b) ensure that the person will be available for removal from Australia.
- (3) A person to whom this section applies who is detained must be given a written statement of the reasons for detention.
- (4) A person to whom this section applies who is detained may apply to the Federal Court for an order that he or she be released because there are no reasonable grounds to consider that detention is necessary for the reasons specified in subsection (2).
- (5) A person to whom this section applies may be detained for a period not exceeding 90 days unless the Federal Court makes an order under subsection (7), a further order under subsection (9) or an order under subsection (11) that the person must be kept in immigration detention.
- (6) The Secretary may apply to the Federal Court for an order under subsection (7), a further order under subsection (9) or an order under subsection (11) that a person to whom this section applies must be kept in immigration detention.

- (7) The Federal Court may make an order that a person to whom this section applies must be kept in immigration detention for a period not exceeding 90 days if the court is satisfied that:
 - (a) there is a real likelihood of the person being removed from Australia in the reasonably foreseeable future; or
 - (b) if the person were allowed to leave immigration detention, there would be a significant risk that the person:
 - (i) would represent a danger to the safety or welfare of the Australian community, or to a segment of that community; or
 - (ii) would not be available for removal from Australia.
- (8) In considering whether it is necessary to make an order under subsection (7) or a further order under subsection (9) to ensure that the person would be available for removal, the Federal Court must take into account the effectiveness and appropriateness of imposing conditions of release which would ensure that, should the person be released from detention, the person would be available for removal from Australia.
- (9) If the Federal Court has made an order under subsection (7) or a further order under this subsection, that a person be detained for a further period specified in the order, at the end of that specified period the person must be released from immigration detention unless the court has made a further order under this subsection that the person must be kept in immigration detention, provided that a further order under this subsection must not order that the person be kept in immigration detention for a further period exceeding 90 days.
- (10) The Federal Court may order that a person who is released from detention must comply with reasonable conditions to ensure that the person would be available for removal from Australia.
- (11) The Federal Court may order that a person who has not complied with conditions of release imposed by the court may be detained for a period which the court considers reasonable in the circumstances.
- (12) A person to whom this section applies who is released from detention must be granted a bridging visa which provides that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 8

Senators—

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

NOES, 31

Senators—

Barnett	Eggleston (Teller)	Kirk	Stephens
Bishop	Ellison	Knowles	Tchen
Buckland	Faulkner	Lightfoot	Troeth
Chapman	Ferguson	Marshall	Vanstone
Colbeck	Ferris	Moore	Watson
Collins	Fierravanti-Wells	Patterson	Webber
Crossin	Hogg	Ray	Wong
Denman	Humphries	Santoro	

Question negatived.

Senator Nettle moved the following amendment:

Schedule 1, page 7 (after line 3), after item 10, insert:

10G After section 196

Insert:

196C Act of compassion for long-term detainees

- (1) This section applies to a person who is an unlawful non-citizen:
 - (a) who has been in immigration detention for a continuous period of, or whose sum of immigration detention is, at least 365 days; and
 - (b) who has made a valid application (whether or not it has been finally determined) under section 36 for a visa.
- (2) As soon as practicable after the commencement of this section, the Minister must appoint a person as the Judicial Assessor for the purposes of this section.
- (3) A person appointed as the Judicial Assessor must either:
 - (a) be a judge of the Federal Court of Australia; or
 - (b) have been:
 - (i) a judge of the Federal Court of Australia; or
 - (ii) a judge of the Supreme Court of a State or Territory.
- (4) The Secretary must make arrangements for the Judicial Assessor to consider all information available to the Secretary in respect of each person to whom this section applies.
- (5) The Judicial Assessor must, in respect of each person to whom this section applies, consider whether, if the person were allowed to leave immigration detention, there would be a significant risk that:
 - (a) the person would represent a danger to the safety or welfare of the Australian community or to a segment of that community; or
 - (b) the person would not be available for the assessment of the application for a visa; or
 - (c) if the application for a visa has been or may be unsuccessful, the person would not be available for removal from Australia.

- (6) In considering whether there is a significant risk in accordance with paragraph (5)(b) or (c), the Judicial Assessor must take into account the effectiveness and appropriateness of imposing conditions of release which would ensure that, should the person be released from detention, the person would be available for the assessment of the application for a visa or for removal from Australia.
- (7) The Judicial Assessor must:
 - (a) if satisfied that it is necessary that a person to whom this section applies should remain in immigration detention—advise the Minister accordingly; or
 - (b) if satisfied that it is not necessary that a person to whom this section applies should remain in immigration detention—advise the Minister that a bridging visa should be granted to the person.
- (8) If the Judicial Assessor advises the Minister that a bridging visa should be granted to a person, the person must be:
 - (a) granted a bridging visa permitting the person to remain in Australia pending the determination of the application for a visa or removal from Australia; and
 - (b) released from immigration detention as soon as practicable.
- (9) A bridging visa granted under paragraph (8)(a) must provide that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.
- (10) A bridging visa granted under paragraph (8)(a) must provide that the holder must comply with the reasonable conditions, if any, that were recommended by the Judicial Assessor to ensure that the person is available for the assessment of the application for a visa or for removal from Australia.

196D Act of compassion for children and their families in detention

- (1) This section applies to:
 - (a) a child aged less than eighteen who is in immigration detention and who has made a valid application under section 36 for a visa or on whose behalf a valid application under section 36 for a visa has been made; and
 - (b) the parent or parents and sibling or siblings, if any, of a child in immigration detention, who is or are also in immigration detention, and who has or have made a valid application under section 36 for a visa.
- (2) The Judicial Assessor must, in respect of each person to whom this section applies, consider whether, if the person were allowed to leave immigration detention, there would be a significant risk that:
 - (a) the person would represent a danger to the safety or welfare of the Australian community or to a segment of that community; or
 - (b) the person would not be available for the assessment of the application for a visa; or
 - (c) if the application for a visa has been or may be unsuccessful, the person would not be available for removal from Australia.

- (3) In considering whether there is a significant risk in accordance with paragraph (2)(b) or (c), the Judicial Assessor must take into account the effectiveness and appropriateness of imposing conditions of release which would ensure that, should the person be released from detention, the person would be available for the assessment of the application for a visa or for removal from Australia.
- (4) The Judicial Assessor must:
 - (a) if satisfied that it is necessary that a person to whom this section applies should remain in immigration detention—advise the Minister accordingly; or
 - (b) if satisfied that it is not necessary that a person to whom this section applies should remain in immigration detention—advise the Minister that a bridging visa should be granted to the person.
- (5) If the Judicial Assessor advises the Minister that a bridging visa should be granted to a person, the person must be:
 - (a) granted a bridging visa permitting the person to remain in Australia pending the determination of the application for a visa or removal from Australia; and
 - (b) released from immigration detention as soon as practicable.
- (6) A bridging visa granted under paragraph (5)(a) must provide that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.
- (7) A bridging visa granted under paragraph (5)(a) must provide that the holder must comply with the reasonable conditions, if any, that were recommended by the Judicial Assessor to ensure that the person is available for the assessment of the application for a visa or for removal from Australia.

196E Act of compassion for temporary protection visa holders

- (1) If a person is the holder of a temporary protection visa on the date of commencement of this section, the Minister must grant the person a visa permitting the person to remain in Australia permanently.
- (2) Subsection (1) is to be taken as sufficient authority for the grant of a visa permitting a person to remain in Australia permanently notwithstanding any inconsistency with any other provisions of this Act.

196F Permanent residence for people who cannot be removed from Australia

- (1) This section applies to a person who:
 - (a) has been subject to an order for removal for a period of 1095 days following the final determination of a valid application for a visa under section 36; and
 - (b) has been granted a bridging visa pursuant to a recommendation of the Judicial Assessor or otherwise.
- (2) For the purposes of subsection (1) and to avoid doubt, an application for a visa under section 36 does not include a request to the Minister for a determination under section 48B or for the exercise of the Minister's power under section 417, 454 or 501J.

- (3) A person to whom this section applies must be given a visa to remain permanently in Australia unless the Minister reasonably believes that:
 - (a) the person does not pass the character test, as provided for by section 501; or
 - (b) the person unreasonably failed to cooperate with the processes for determining the visa application or for arranging removal from Australia.
- (4) If the Minister decides to refuse to grant a visa to a person under this section, the Minister must, as soon as practicable after making the decision, give the person a written notice that sets out the decision and the reasons for making it.
- (5) A person who has been refused a visa under this section may appeal the decision to the Administrative Appeals Tribunal.
- (6) A visa granted under this section must provide that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 5

Senators—

Bartlett (Teller)	Murray	Nettle	Ridgeway
Greig			

NOES, 28

Senators—

Barnett	Crossin	Knowles	Patterson
Bishop	Eggleston	Lightfoot	Stephens
Boswell	Ferris (Teller)	Ludwig	Tchen
Buckland	Fierravanti-Wells	Macdonald, Sandy	Troeth
Chapman	Hogg	Marshall	Vanstone
Colbeck	Humphries	McGauran	Webber
Collins	Kirk	Moore	Wong

Question negatived.

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

Schedule 1, item 11, page 7 (line 13), omit “If”, substitute “Subject to section 197ABA, if”.

Schedule 1, item 11, page 7 (after line 25), after section 197AB, insert:

197ABA Children to reside at specified place rather than being held in detention centre etc.

- (1) Unless the Minister receives a determination under section 197ABC from the Judicial Assessor, the Minister must make a residence determination for a child under the age of 18 years within 30 days of the day on which this section commences.

- (2) Unless the Minister receives a determination under section 197ABC from the Judicial Assessor, if the Minister has made a residence determination under subsection (1) for a child, the Minister must also make a residence determination for any parent, brother or sister of the child if that parent, brother or sister is held in detention with the child.

197ABB Appointment of Judicial Assessor

- (1) As soon as practicable after this section commences, the Minister must appoint a person as the Judicial Assessor for the purposes of this section.
- (2) A person appointed as the Judicial Assessor must either:
- (a) be a judge of the Federal Court of Australia; or
 - (b) have been:
 - (i) a judge of the Federal Court of Australia; or
 - (ii) a judge of the Supreme Court of a State or Territory.
- (3) The role of the Judicial Assessor is to consider applications by the Secretary for a determination by the Judicial Assessor that a residence determination should not be made under subsection 197ABA(1) for a child or under subsection 197ABA(2) for a parent, brother or sister of a child.

197ABC Determinations by Judicial Assessor

- (1) If the Secretary makes an application to the Judicial Assessor for a determination under this section for a child or the parent, brother or sister of a child, the Secretary must ensure that all information held by the Department relating to that person is made available to the Judicial Assessor.
- (2) The Judicial Assessor must not make a determination that a residence determination should not be made for a child or the parent, brother or sister of a child unless the Judicial Assessor concludes that, if the person were allowed to leave immigration detention, there would be a significant risk that:
- (a) the person would represent a danger to the safety and welfare of the Australian community or to a segment of that community; or
 - (b) the person would not be available if required for any further action under this Act.
- (3) A determination by the Judicial Assessor under this section must:
- (a) be made by notice in writing; and
 - (b) be provided to the Minister within 7 days after it has been made.

Schedule 1, item 11, page 9 (line 28), omit “The”, substitute “Subject to section 197ABA, the”.

Senator Ludwig moved the following amendment:

Schedule 1, page 11 (after line 23), after item 18, insert:

18A Before Part 9

Insert:

Part 8BA—Inspector-General of Detention

486KA Inspector-General of Detention

As soon as practicable after this section commences, the Minister must appoint a person as the Inspector-General of Detention (the *Inspector-General*).

486KB Functions of Inspector-General of Detention

- (1) The functions of the Inspector-General are to:
 - (a) receive and make determinations concerning complaints from persons in immigration detention; and
 - (b) pay particular attention to the needs of children in immigration detention, in community care or in residence at a place specified under section 197AB; and
 - (c) consider general or systemic matters the Inspector-General decides of his or her own volition to consider; and
 - (d) consider all matters the Minister directs the Inspector-General to consider.
- (2) For the purposes of this section, *in immigration detention* means being detained in a place in accordance with paragraph (b) of the definition of *immigration detention* in subsection 5(1).

486KC Exercise of functions of Inspector-General of Detention

- (1) The Secretary must ensure that the Inspector-General is given unrestricted access to:
 - (a) detention centres and immigration processing facilities (including those on Christmas Island); and
 - (b) detainees; and
 - (c) the staff of the Department or of private contractors employed at detention centres or immigration processing facilities; and
 - (d) all records relevant to a complaint made under section 486KB.
- (2) The Inspector-General may make a finding about any matter considered by the Inspector-General.
- (3) The Secretary must take action to give effect to any finding made by the Inspector-General.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 24

Senators—

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

NOES, 35

Senators—

Abetz	Eggleston	Johnston	Ridgeway
Allison	Ellison	Knowles	Santoro
Barnett	Ferguson	Lightfoot	Scullion
Bartlett	Ferris (Teller)	Macdonald, Ian	Stott Despoja
Boswell	Fierravanti-Wells	Macdonald, Sandy	Tchen
Brandis	Fifield	Mason	Troeth
Chapman	Greig	McGauran	Vanstone
Colbeck	Heffernan	Murray	Watson
Coonan	Humphries	Patterson	

Question negatived.

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

Schedule 1, item 19, page 12 (line 2), omit “2 years”, substitute “90 days”.

Schedule 1, item 19, page 12 (line 10), omit “2 years”, substitute “90 days”.

Schedule 1, item 19, page 12 (line 11), omit “2 years”, substitute “90 days”.

Schedule 1, item 19, page 12 (line 15), omit “2 years” (twice occurring), substitute “90 days”.

Schedule 1, item 19, page 12 (line 22), omit “6 months”, substitute “one month”.

Schedule 1, item 19, page 12 (line 31), omit “6 months”, substitute “one month”.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) the report from the committee was adopted and the bill read a third time.

59 TAX LAWS AMENDMENT (2005 MEASURES NO. 1) BILL 2005

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

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

Explanatory memorandum: The Minister for Communications, Information Technology and the Arts (Senator Coonan) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Clause 2, page 1 (line 7) to page 2 (line 6), omit the clause, substitute:

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

Schedule 3, item 3, page 6 (lines 18 to 22), omit the item.

Schedule 3, page 6 (after line 26), after item 4, insert:

4A At the end of subsection 83-5(2)

Add:

; or (c) a supply that is disregarded under paragraph 188-15(3)(b) or (c) or 188-20(3)(b) or (c) (which are about supplies of rights or options offshore).

Schedule 3, page 8 (after line 21), after item 16, insert:

16A Section 151-5

Before “You are eligible”, insert “(1)”.

16B At the end of section 151-5

Add:

(2) However, you are not eligible to make an *annual tax period election if the only reason you are not *required to be registered is because you disregarded supplies under paragraph 188-15(3)(b) or (c) or 188-20(3)(b) or (c) (which are about supplies of rights or options offshore).

16C Subsection 188-15(3)

Repeal the subsection, substitute:

Supplies that are disregarded

(3) In working out your *current annual turnover*, disregard:

- (a) any supply that is not *connected with Australia; and
- (b) any supply that is connected with Australia because of paragraph 9-25(5)(c); and
- (c) any supply (other than a supply covered by paragraph (a) or (b)):
 - (i) of a right or option to use *commercial accommodation in Australia; and
 - (ii) that is not made in Australia; and
 - (iii) that is made through an *enterprise that the supplier does not *carry on in Australia.

16D Subsection 188-20(3)

Repeal the subsection, substitute:

Supplies that are disregarded

(3) In working out your *projected annual turnover*, disregard:

- (a) any supply that is not *connected with Australia; and
- (b) any supply that is connected with Australia because of paragraph 9-25(5)(c); and
- (c) any supply (other than a supply covered by paragraph (a) or (b)):
 - (i) of a right or option to use *commercial accommodation in Australia; and
 - (ii) that is not made in Australia; and
 - (iii) that is made through an *enterprise that the supplier does not *carry on in Australia.

Schedule 3, item 17, page 8 (lines 22 to 25), omit the item, substitute:

17 Application provision

The amendments made by items 1 to 16D apply to supplies made on or after 1 October 2005.

18 Transitional provision

For the purposes of sections 188-15 and 188-20 of the *A New Tax System (Goods and Services Tax) Act 1999*, in working out an enterprise's current annual turnover, or projected annual turnover, at a time during July, August or September 2005, disregard a supply if:

- (a) the enterprise through which the supply is made is not carried on in Australia; and
- (b) the supply:
 - (i) is a supply of a right or option to use commercial accommodation in Australia; and
 - (ii) is not made in Australia.

Schedule 4, heading to item 5, page 11 (line 30), at the end of the heading, add “**of items 1 to 4**”.

Schedule 4, item 5, page 11 (line 31), omit “this Schedule”, substitute “items 1 to 4”.

Schedule 4, page 11 (after line 32), at the end of the Schedule, add:

Taxation Administration Act 1953

6 Section 45-340 in Schedule 1 (method statement, step 1, after paragraph (a))

Insert:

(aaaa) Subdivision 61-K of the <i>Income Tax Assessment Act 1997</i> (for mature age workers); or
--

7 Application of item 6

The amendment made by item 6 applies in relation to the calculation of an entity's adjusted tax:

- (a) for a base year that is the first income year starting on or after 1 July 2004 or a later income year; and
- (b) only for the purposes of a PAYG instalment period that includes, or starts after, the day on which this Act receives the Royal Assent.

8 Section 45-375 in Schedule 1 (method statement, step 1, after paragraph (a))

Insert:

(aaa) Subdivision 61-K of the *Income Tax Assessment Act 1997* (for mature age workers); or

9 Application of item 8

The amendment made by item 8 applies in relation to the calculation of an entity's adjusted assessed tax for a variation year that is the first income year starting on or after 1 July 2004 or a later income year.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

Senator Coonan moved—That the report from the committee be adopted.

Senator Sherry moved the following amendment:

At the end of the motion, add “but the Senate calls on the Government to, within 6 months:

- (a) report to the Senate the long-term revenue cost estimates of the mature tax offset until 2040; and
- (b) undertake and publish econometric modelling of the labour market impact of the offset”.

Debate ensued.

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

Main question put and passed.

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

Question put and passed.

Bill read a third time.

60 TAX LAWS AMENDMENT (2005 MEASURES NO. 2) BILL 2005

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

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

Explanatory memorandum: The Minister for Communications, Information Technology and the Arts (Senator Coonan) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Schedule 8, page 40 (after line 9), after item 2, insert:

2A Paragraph 58PC(1)(d)

Omit “or 1 April 2004”, substitute “, 1 April 2004 or 1 April 2005”.

Schedule 8, item 3, page 40 (line 11), after “made by”, insert “items 1 and 2 of”.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

61 **SUPERANNUATION BILL 2005**

SUPERANNUATION (CONSEQUENTIAL AMENDMENTS) BILL 2005

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

Debate resumed.

Question put and passed.

Bills read a second time.

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

In the committee

SUPERANNUATION (CONSEQUENTIAL AMENDMENTS) BILL 2005—

Bill taken as a whole by leave.

Senator Abetz moved the following amendment:

Schedule 7, page 23 (after line 12), at the end of the Schedule, add:

3 CGT roll-over—transfer of PSS Fund assets to pooled superannuation trust

Object

(1) The object of this item is to provide for a CGT roll-over so as to facilitate the exercise by the PSS Board of its powers under:

- (a) section 22 of the *Superannuation Act 1990* in relation to the PSS Fund; and
- (b) section 20 of the *Superannuation Act 2005* in relation to the PSSAP Fund;

to set up and/or operate a pooled superannuation trust that is used for investing the assets of the PSS Fund and the assets of the PSSAP Fund.

Roll-over

- (2) There is a roll-over if:
- (a) one or more CGT events happen because the PSS Board ceases to hold all of the CGT assets of the PSS Fund; and
 - (b) because of the cessation, CGT assets (the *identical assets*) that, together, are identical to all the CGT assets of the PSS Fund just before the happening of the CGT events start to be held by the trustee (the *transferee trustee*) of a pooled superannuation trust (whether or not all the identical assets were assets of the PSS Fund just before the CGT events); and
 - (c) the cessation is part of a scheme under which CGT assets of the PSS Fund are replaced with units in the pooled superannuation trust.

Note: The transferee trustee may be the PSS Board—see subsection 960-100(3) of the *Income Tax Assessment Act 1997*.

- (3) A capital gain or capital loss the PSS Board makes from each of the CGT events is disregarded.
- (4) For the transferee trustee, the first element of the cost base of each of the identical assets the transferee trustee holds is the cost base of the corresponding asset for the PSS Board at the time of the relevant CGT event.
- (5) For the transferee trustee, the first element of the reduced cost base of each of the identical assets the transferee trustee holds is the reduced cost base of the corresponding asset for the PSS Board at the time of the relevant CGT event.
- (6) For the purposes of the *Income Tax Assessment Act 1997*, a roll-over covered by this item is taken to be a same-asset roll-over.

Interpretation

- (7) An expression used in this item and in the *Income Tax Assessment Act 1997* has the same meaning in this item as it has in that Act.

Debate ensued.

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

Question—That the amendment be agreed to—put and passed.
Bill, as amended, agreed to.

SUPERANNUATION BILL 2005—

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

The Superannuation (Consequential Amendments) Bill 2005 to be reported with an amendment and the Superannuation Bill 2005 to be reported without amendments.

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

Senator Abetz moved—That the report from the committee be adopted.

Senator Sherry moved the following amendment:

At the end of the motion, add “but the Senate condemns the Government for failing to publicly release updated actuarial projections which take into account the impact on public sector superannuation liabilities of the closure of the Public Sector Superannuation scheme on 1 July 2005 despite being asked to do so during Senate estimates hearings in both February and May 2005”.

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

Main question put and passed.

Senator Abetz moved—That these bills be now read a third time.

Question put and passed.

Bills read a third time.

**62 TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT) BILL (NO. 1) 2005
SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005**

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

Debate resumed.

Question put and passed.

Bills read a second time.

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

In the committee

**TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT)
BILL (NO. 1) 2005—**

Bill taken as a whole by leave.

Senator Sherry moved the following amendments together by leave:

Schedule 2, item 16, page 14 (line 25), at the end of subitem (1), add:

; and (d) the rate of the general interest charge is to be equal to the rate of the shortfall interest charge in respect of amended assessments where the general interest charge is incurred due to an increased taxation liability, after the date of Royal Assent.

Note: In relation to paragraph (d), where the shortfall interest charge is not paid within the required period, the provisions of the Act relating to the general interest charge apply.

Schedule 2, item 16, page 14 (line 34), at the end of subitem (2), add:

; and (d) the rate of the general interest charge is to be equal to the rate of the shortfall interest charge in respect of amended assessments where the general interest charge is incurred due to an increased taxation liability, after the date of Royal Assent.

Note: In relation to paragraph (d), where the shortfall interest charge is not paid within the required period, the provisions of the Act relating to the general interest charge apply.

Debate ensued.

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

Bill agreed to.

SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005—

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

The Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005 to be reported without amendment and the Shortfall Interest Charge (Imposition) Bill 2005 to be reported without requests for amendments.

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

On the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan) the report from the committee was adopted and the bills read a third time.

63 SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF SUPERANNUATION FUNDS) BILL 2005

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

Debate resumed.

Senator Sherry moved the following amendment:

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

- (a) condemns the Government for the poorly designed choice of superannuation fund regime, which is too complex and unsafe; and
- (b) calls on the Government to:
 - (i) exempt small businesses of 20 employees or less from this new red tape burden, and
 - (ii) remove the two-year gaol term and the \$22 000 fine on employers if they provide advice to their employees”.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 23

Senators—

Bishop	Conroy	Marshall	Ray
Bolkus	Crossin	McLucas	Sherry
Brown	Forshaw	Moore	Stephens
Buckland	Hogg	Murphy	Webber
Campbell, G (Teller)	Kirk	Nettle	Wong
Collins	Ludwig	O'Brien	

NOES, 36

Senators—

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

Question negatived.

Main question put and passed.

Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

Senator Sherry moved the following amendments together by leave:

Schedule 1, page 3 (after line 14), after item 4, insert:

4A At the end of subsection 32C(1)

Add:

; or (c) in the case of an employer with fewer than 20 employees at the time the employer would but for subsection 32NA(2A) provide an employee with a standard choice form under section 32N, a fund chosen by the employer.

Schedule 1 page 5 (after line 8), after item 9, insert:

9A At the end of section 32FA

Add:

- (3) An employer with fewer than 20 employees, at the time the employer would but for subsection 32NA(2A) provide an employee with a standard choice form under section 32N, may refuse to accept the fund chosen by the employee under section 32F.

Schedule 1, item 11, page 5 (after line 24), before subsection (3), insert:

- (2A) An employer is not required under section 32N to give an employee a standard choice form if, at the time the employer would, but for this subsection, provide an employee with a standard choice form under section 32N, the employer has fewer than 20 employees.

Schedule 1, page 6 (after line 35), after item 11, insert:

11A After section 32ZA

Insert:

32ZB Provision of superannuation advice by employers to employees

For the avoidance of doubt, if an employer provides an employee with superannuation advice and:

- (a) the employer has no pecuniary interest in the advice given; and
(b) the advice is provided at the request of the employee;

the employer is not carrying on a financial services business for the purposes of Chapter 7 of the *Corporations Act 2001*.

Debate ensued.

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

Bill further debated and agreed to.

Bill to be reported without amendment.

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

On the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan) the report from the committee was adopted and the bill read a third time.

**64 CRIMINAL CODE AMENDMENT (SUICIDE RELATED MATERIAL OFFENCES)
BILL 2005**

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

Debate resumed.

Question put.

The Senate divided—

AYES, 38

Senators—

Barnett	Ferguson	Lightfoot	Scullion
Brandis	Ferris	Ludwig	Sherry
Buckland	Fierravanti-Wells	Lundy	Stephens
Chapman	Fifield	Marshall	Tchen
Colbeck	Forshaw	Mason	Troeth
Collins	Hogg	McLucas	Watson
Coonan	Humphries	Moore	Webber
Crossin	Johnston	O'Brien	Wong
Eggleston (Teller)	Kirk	Patterson	
Ellison	Knowles	Santoro	

NOES, 9

Senators—

Allison
Brown
Cherry

Greig
Lees

Murray
Nettle (Teller)

Ridgeway
Stott Despoja

Question agreed to.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

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

Senator Ellison moved the following amendments together by leave:

Schedule 1, item 1, page 3 (line 17), after “incites”, insert “committing or attempting to commit”.

Schedule 1, item 1, page 3 (line 20), after “incite”, insert “committing or attempting to commit”.

Schedule 1, item 1, page 3 (line 23), after “incite”, insert “committing or attempting to commit”.

Schedule 1, item 1, page 4 (line 20), after “incite”, insert “committing or attempting to commit”.

Schedule 1, item 1, page 4 (line 23), after “incite”, insert “committing or attempting to commit”.

Schedule 1, item 1, page 5 (line 8), after “incites”, insert “committing or attempting to commit”.

Debate ensued.

The Senate continued to sit till midnight—
FRIDAY, 24 JUNE 2005 AM

Debate continued.

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

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

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

Debate ensued.

Question put and passed.

Bill read a third time.

65 MIGRATION AMENDMENT (DETENTION ARRANGEMENTS) BILL 2005

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

Message no. 175, dated 23 June 2005—Migration Amendment (Detention Arrangements) Bill 2005.

Ordered, on the motion of the Minister for Justice and Customs (Senator Ellison), that the message be considered in committee of the whole immediately.

In the committee

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

Debate ensued.

Question put and passed.

Resolution to be reported.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Crossin) reported that the committee had considered message no. 175 from the House of Representatives relating to the Migration Amendment (Detention Arrangements) Bill 2005 and had resolved not to insist on the amendments made by the Senate to which the House had disagreed.

On the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan) the report from the committee was adopted.

66 TELECOMMUNICATIONS LEGISLATION AMENDMENT (REGULAR REVIEWS AND OTHER MEASURES) BILL 2005

Order of the day read for the adjourned debate on the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

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

Schedule 1, item 1, page 3 (lines 15 and 16), omit “of an administrative character”, substitute “by written instrument”.

Schedule 1, item 1, page 3 (after line 16), after subsection 66(2), insert:

- (2A) A decision made by written instrument in accordance with subsection (2) is a legislative instrument.

Schedule 1, item 2, page 3 (lines 25 and 26), omit the definition of *RTIRC*, substitute:

TIRC means the Telecommunications Independent Review Committee established by section 158R.

Schedule 1, item 3, page 4 (lines 2 and 3), omit the definition of *RTIRC Chair*, substitute:

TIRC Chair means the Chair of the Telecommunications Independent Review Committee.

Schedule 1, item 4, page 4 (lines 6 to 8), omit the definition of *RTIRC member*, substitute:

TIRC member means a member of the Telecommunications Independent Review Committee, and includes the TIRC Chair.

Schedule 1, page 3 (line 19) to page 11 (line 8), omit “*RTIRC*” (wherever occurring), substitute “*TIRC*”.

Schedule 1, page 3 (line 19) to page 11 (line 8), omit “*RTIRC*” (wherever occurring), substitute “*TIRC*”.

Schedule 1, item 6, page 4 (lines 15 to 19), omit “*regional*” (three times occurring).

Schedule 1, item 6, page 4 (line 21) to page 5 (line 2), omit subsections 158P(1) and (2), substitute:

- (1) The TIRC must conduct reviews of the adequacy of telecommunications services.

Note: *TIRC* means the Telecommunications Independent Review Committee established by section 158R.

- (2) In reviewing the adequacy of services in accordance with subsection (1), the TIRC must have regard to:

- (a) the extent to which those services meet the social, industrial and commercial needs of the Australian people including those in regional, rural and remote parts of Australia, for telecommunications services; and
- (b) whether those services are equitably and reasonably available throughout Australia for all people who reasonably require those services, including whether those services are:
- (i) significant to people in regional, rural and remote parts of Australia; and
- (ii) currently available in one or more urban parts of Australia; and
- (c) the extent to which the objects of the *Telecommunications Act 1997* are being achieved; and

- (d) the extent to which the long-term interests of end-users of telecommunications services are promoted.

Note: Section 152AB of the *Trade Practices Act 1974* sets out the requirements for the “promotion of the long-term interests of end-users”.

Schedule 1, item 6, page 5 (lines 4 to 8), omit “5 years” (twice occurring), substitute “3 years”.

Schedule 1, item 6, page 7 (line 7), at the end of subsection 158T(2), add:

- ; or (c) competition policy; or
- (d) economics; or
- (e) consumer protection; or
- (f) Australian industry; or
- (g) public policy; or
- (h) the needs of community organisations.

Schedule 1, item 6, page 7 (lines 8 to 12), omit subsection 158T(3), substitute:

- (3) The Minister must ensure that the TIRC Chair and TIRC members are not persons covered by subsection (4).

Schedule 1, item 6, page 7 (lines 14 and 15), omit paragraphs 158T(4)(a) and (b), substitute:

- (a) an officer or employee of a carrier licensed under the *Telecommunications Act 1997* or a subsidiary of such a carrier;

Schedule 1, item 6, page 10 (after line 30), after paragraph 158ZD(1)(b), insert:

- (ba) the Productivity Commission;
- (bb) the Department of Transport and Regional Services;

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

67 FAMILY LAW AMENDMENT BILL 2005

Order of the day read for the consideration of message no. 170 from the House of Representatives in committee of the whole (*see entry no. 25*).

In the committee

SCHEDULE OF THE AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES

- (1) Schedule 1, item 136, page 34 (lines 25 to 27), omit “may make such order that it considers just and equitable in the circumstances, including”, substitute “must make such order as it considers just and equitable in the circumstances, for”.

[recovery of amounts paid under maintenance orders]

- (2) Schedule 1, item 136, page 34 (line 28) to page 35 (line 6), omit paragraphs 66X(2)(a) and (b), substitute:

- (a) if the purported order was of a kind referred to in paragraph 66P(1)(a) or (b)—the repayment to the maintenance provider, by the person to whom the amount or amounts referred to in subparagraph (1)(b)(i) of this section were paid, of an amount up to, or equal to, that amount or the sum of those amounts; or
- (b) if the purported order was of the kind referred to in paragraph 66P(1)(c)—the return to the maintenance provider of:
 - (i) the property referred to in subparagraph (1)(b)(ii) of this section; or
 - (ii) an amount up to, or equal to, the value of that property.

The court may only order the repayment of an amount that is less than the amount, or the sum of the amounts, referred to in subparagraph (1)(b)(i) of this section, or the return of an amount that is less than the value of the property referred to in subparagraph (1)(b)(ii) of this section, in exceptional circumstances.

The Minister for Justice and Customs (Senator Ellison) moved—That the committee agrees to the amendments made by the House of Representatives to the bill.

Debate ensued.

Question put and passed.

Resolution to be reported.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Crossin) reported that the committee had considered message no. 170 from the House of Representatives relating to the Family Law Amendment Bill 2005 and had agreed to the amendments made by the House to the bill.

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

68 APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (NO. 1) 2005-2006

APPROPRIATION BILL (NO. 1) 2005-2006

APPROPRIATION BILL (NO. 2) 2005-2006

APPROPRIATION BILL (NO. 5) 2004-2005

APPROPRIATION BILL (NO. 6) 2004-2005

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

Debate resumed.

Question put and passed.

Bills read a second time.

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

The Minister for Justice and Customs (Senator Ellison) moved—That these bills be now read a third time.

Debate ensued.

Documents: Senator Collins, by leave, tabled the following documents:

Family and Community Services—Adoption—Petitioning documents.

Documents: Senator Murphy, by leave, tabled the following documents:

Finance—Tasmania—Trust Bank—Copies of—

Extracts—

Hansard, dated 6 November 1990, 10 April and 14 May 1991.

In Trust for 150 years.

Tasmania Bank—Board of Directors, 1990.

Letters to—

Acting Secretary (Ms Yvonne Marsh), Select Committee on Public Interest Whistleblowing from—

Chairman (Mr John Harris), Trust Bank Tasmania, dated 7 January 1994 and attachment.

Governor (Mr BW Fraser), Reserve Bank of Australia, dated 29 December 1993.

Premier of Tasmania (the Honourable Michael Field, MHA), dated 9 June and 8 August 1990.

Senior Private Secretary (Mr J Jessup), Office of the Premier of Tasmania from Secretary (MJ Vertigan), Department of Treasury and Finance, dated 11 November 1992 and attachment.

Newspaper article, ‘Whistleblowers played out’, *The Examiner*, December 1999.

Question put and passed.

Bills read a third time.

69 CRIMES LEGISLATION AMENDMENT (TELECOMMUNICATIONS INTERCEPTION AND OTHER MEASURES) BILL 2005
STATUTE LAW REVISION BILL 2005
FISHERIES LEGISLATION AMENDMENT (INTERNATIONAL OBLIGATIONS AND OTHER MATTERS) BILL 2005

Messages from the House of Representatives were reported agreeing to the following bills without amendment:

Message no. 171, dated 23 June 2005—Crimes Legislation Amendment (Telecommunications Interception and Other Measures) Bill 2005.

Message no. 172, dated 23 June 2005—Statute Law Revision Bill 2005.

Message no. 173, dated 23 June 2005—Fisheries Legislation Amendment (International Obligations and Other Matters) Bill 2005.

**70 TAX LAWS AMENDMENT (2005 MEASURES NO. 1) BILL 2005
TAX LAWS AMENDMENT (2005 MEASURES NO. 2) BILL 2005
SUPERANNUATION (CONSEQUENTIAL AMENDMENTS) BILL 2005
CRIMINAL CODE AMENDMENT (SUICIDE RELATED MATERIAL OFFENCES) BILL
2005**

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

Message no. 177, dated 23 June 2005—Tax Laws Amendment (2005 Measures No. 1) Bill 2005.

Message no. 176, dated 23 June 2005—Tax Laws Amendment (2005 Measures No. 2) Bill 2005.

Message no. 178, dated 23 June 2005—Superannuation (Consequential Amendments) Bill 2005.

Message no. 179, dated 24 June 2005 am—Criminal Code Amendment (Suicide Related Material Offences) Bill 2005.

71 COMMITTEES—CHANGES IN MEMBERSHIP

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

The Special Minister of State (Senator Abetz), by leave, moved—That senators be discharged from and appointed to committees as follows:

Employment, Workplace Relations and Education Legislation Committee—

Appointed—Substitute member: Senator Fifield to replace Senator Barnett for the committee's inquiry into the provisions of the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005

Finance and Public Administration References Committee—

Appointed—Substitute member: Senator Carr to replace Senator Stephens, from 1 July 2005, for the committee's inquiry into the Regional Partnerships program except on 14 July, 15 July, 18 July and 19 July 2005.

Question put and passed.

72 LEAVE OF ABSENCE

The Special Minister of State (Senator Abetz) moved—That leave of absence be granted to every member of the Senate from the termination of the sitting today to the day on which the Senate next meets.

Question put and passed.

73 ADJOURNMENT

Pursuant to order, the Senate adjourned at 1.24 am till Tuesday, 9 August 2005 at 12.30 pm.

74 **ATTENDANCE**

Present, all senators except Senators Ian Campbell*, Mackay* and Payne* (* on leave).

HARRY EVANS
Clerk of the Senate