

2002

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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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 ALLOCATION OF THE CALL—STATEMENT BY PRESIDENT

The President made a statement relating to a matter raised with the Acting Deputy President (Senator Knowles) during the matters of public interest discussion on 13 November 2002 and the established practice that there be a balance between the government and the non-government parties in the allocation of the call.

3 CONSIDERATION OF LEGISLATION

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), pursuant to notice, moved government business notice of motion no. 1—That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Environment and Heritage Legislation Amendment Bill (No. 1) 2002
Australian Heritage Council Bill 2002
Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002.

Debate ensued.

On the motion of Senator Ian Campbell the debate was adjourned till a later hour.

Senator Ian Campbell, pursuant to notice, moved government business notice of motion no. 2—That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Australian Crime Commission Establishment Bill 2002
New Business Tax System (Consolidation and Other Measures) Bill (No. 1) 2002
New Business Tax System (Franking Deficit Tax) Amendment Bill 2002.

Debate ensued.

Question put and passed.

Order read for the adjourned debate on the motion of Senator Ian Campbell—That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Environment and Heritage Legislation Amendment Bill (No. 1) 2002
Australian Heritage Council Bill 2002
Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002.

Debate resumed.

Question put and negatived.

4 ORDER OF BUSINESS—REARRANGEMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) moved—That government business notice of motion no. 3 standing in his name for today, relating to the hours of meeting and routine of business for Monday, 2 December 2002, be postponed till the next day of sitting.

Question put and passed.

5 ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2002
AUSTRALIAN HERITAGE COUNCIL BILL 2002
AUSTRALIAN HERITAGE COUNCIL (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS)
BILL 2002

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

Message no. 200, dated 14 November 2002—A Bill for an Act to amend legislation relating to the environment, and for related purposes.

Message no. 198, dated 14 November 2002—A Bill for an Act to establish the Australian Heritage Council, and for related purposes.

Message no. 197, dated 14 November 2002—A Bill for an Act to repeal and amend certain Acts as a consequence of the enactment of the *Australian Heritage Council Act 2002*, and for related purposes.

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) 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 Ian Campbell moved—That these bills be now read a second time.

Consideration of legislation: Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

6 AUSTRALIAN CRIME COMMISSION ESTABLISHMENT BILL 2002

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

Message no. 196, dated 14 November 2002—A Bill for an Act to establish the Australian Crime Commission, and for other purposes.

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

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

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

7 FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell)—That this bill be now read a second time—and on the amendment moved by Senator Bishop:

At the end of the motion, add “but the Senate condemns the Government’s unfair application of breach penalties on job seekers and calls on it to amend the breach penalty regime in line with principles outlined in the report of the *Independent Review of Breaches and Penalties in the Social Security System* (the Pearce review), including:

- (a) a rate reduction for first or second breaches of no more than 25 per cent of benefits;
- (b) breach and non-payment periods of a maximum of 8 weeks duration; and
- (c) reinstatement of benefits on compliance”.

Debate resumed.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 27

Senators—

Allison	Cherry	Kirk	Murray
Bartlett	Collins	Ludwig	Nettle
Bishop	Conroy	Lundy	Ridgeway
Bolkus	Cook	Marshall	Stephens
Buckland	Crossin (Teller)	McLucas	Webber
Campbell, George	Greig	Moore	Wong
Carr	Harradine	Murphy	

NOES, 24

Senators—

Abetz	Colbeck	Macdonald, Ian	Santoro
Barnett	Eggleston	Macdonald, Sandy	Scullion
Boswell	Ferris	Mason	Tchen
Brandis	Heffernan	McGauran (Teller)	Tierney
Calvert	Johnston	Payne	Troeth
Campbell, Ian	Lightfoot	Reid	Vanstone

Question agreed to.

Main question, as amended, put and passed.

Bill read a second time.

Senator Bishop, pursuant to contingent notice, moved—That it be an instruction to the committee of the whole that:

- (a) the committee divide the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 (the original bill) into two bills as follows:

- (i) a bill dealing with participation requirements and penalties, comprising clauses 1 to 3 (with appropriate amendments) and Schedules 1, 4 and 5 of the original bill, and
 - (ii) a bill dealing with additional funding for welfare measures, comprising Schedules 2, 3, 6 and 7 of the original bill; and
- (b) the committee add enacting words and provisions for titles and commencement to the second bill.

Debate ensued.

Question put and passed.

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 Family and Community Services (Senator Vanstone) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Clause 2, page 2 (table), omit the table, substitute:

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Schedule 1	1 July 2003	
3. Schedule 2	20 September 2002	
4. Schedule 3	The 28th day after the day on which this Act receives the Royal Assent	
5. Schedules 4 and 5	1 July 2003	
6. Schedule 6	28 April 2003	
7. Schedule 7	The day on which this Act receives the Royal Assent	

Schedule 1, page 3 (before line 4), before Part 1, insert:

Part 1A—Amendment of the A New Tax System (Family Assistance) Act 1999

A New Tax System (Family Assistance) Act 1999

1A Subsection 3(1) (definition of receiving)

Repeal the definition, substitute:

receiving:

- (a) in relation to a social security payment—has the same meaning as in subsections 23(2) and (4) of the *Social Security Act 1991*; and
- (b) for the purpose of construing references to a person receiving a social security pension or a social security benefit in clauses 1 and 17 of Schedule 1, and in clause 7 of Schedule 2, to this Act—is taken to include the meaning provided in subsection 23(4A) of the *Social Security Act 1991* as if those clauses were specified in provisions of that Act referred to in subsection 23(4AA) of that Act; and
- (c) for the purpose of construing references to a person receiving a social security pension or social security benefit in clauses 1 and 17 of Schedule 1, and in clause 7 of Schedule 2, to this Act where those references relate to a person:
 - (i) to whom parenting payment would be payable if not for a determination that a participation agreement breach non-payment period applies in relation to the person; or
 - (ii) to whom parenting payment would be payable if not for a determination that a participation agreement breach rate reduction period applies in relation to the person;
 has effect as if that determination had not been made.

Schedule 1, item 12, page 9 (line 19), omit “appropriate”, substitute “inappropriate”

Schedule 1, item 12, page 11 (line 31), omit “6 months”, substitute “26 weeks”.

Schedule 2, page 28 (before line 4), before Part 1, insert:

Part 1A—Amendment of the A New Tax System (Family Assistance) Act 1999

A New Tax System (Family Assistance) Act 1999

1A Paragraph 7(j) of Schedule 3

After “rent assistance”, insert “, language, literacy and numeracy supplement”.

Schedule 2, item 5, page 33 (table item 2, 3rd column), paragraph (d), omit “incentive allowance”, substitute “incentive allowance; and”.

Schedule 2, item 5, page 33 (table item 3, 3rd column), paragraph (c), omit “pharmaceutical allowance”, substitute “pharmaceutical allowance; and”.

Schedule 6, item 7, page 53 (lines 1 and 2), omit paragraph (g), substitute:

- (g) the person:

- (i) in the case of a woman who would, but for this subsection, cease to be receiving wife pension because of the employment income, or the combined income, referred to in subparagraph (e)(ii)—continues, but for that employment income or combined income, to be qualified for wife pension on and from the cessation day; and
- (ii) in any other case—continues to be qualified for the pension or benefit on and from the cessation day;

Schedule 6, page 55 (after line 20), after item 8, insert:

8A Subsection 1061ZB(1)

Omit all the words after paragraph (c), substitute:

the person is qualified for a pensioner concession card:

- (d) if the person is qualified for such a card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and
- (e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

Schedule 6, item 9, page 55 (lines 32 to 36), omit paragraph (c) and all the words following that paragraph, substitute:

- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

Schedule 6, item 9, page 56 (lines 14 to 18), omit paragraph (c) and all the words following that paragraph, substitute:

- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

Schedule 6, page 56 (after line 24), after item 11, insert:

11A Subsection 1061ZC(1)

Omit all the words after paragraph (c), substitute:

the person is qualified for a pensioner concession card:

- (d) if the person is qualified for a pensioner concession card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and
- (e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

Schedule 6, item 12, page 57 (lines 4 to 8), omit paragraph (c) and all the words following that paragraph, substitute:

- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

Schedule 6, item 12, page 57 (lines 22 to 26), omit paragraph (c) and all the words following that paragraph, substitute:

- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(1C) If the person:

- (a) is qualified for a pensioner concession card under section 1061ZEA until a particular day; and
- (b) has, immediately before becoming so qualified, been receiving a social security benefit referred to in paragraph 1061ZA(2)(b) for a continuous period of less than 39 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(a) to a continuous period of not less than 39 weeks, to be receiving the benefit until the particular day.

Schedule 6, item 13, page 57 (lines 27 to 29), omit the item, substitute:

13 Subsection 1061ZC(2)

After “subsection (1)”, insert “(including that subsection as modified by subsection (1A), (1B) or (1C))”.

13A Subsection 1061ZC(3)

After “subsection (1)”, insert “(including that subsection as modified by subsection (1A) or (1B))”.

13B Subsection 1061ZC(4)

After “subsection (1)”, insert “(including that subsection as modified by subsection (1A), (1B) or (1C))”.

Schedule 6, item 18, page 58 (line 26), omit “1061ZB, 1061ZC,”.

Schedule 6, item 18, page 59 (line 32), after paragraph (g), insert:

and (ga) the person:

- (i) in the case of a woman to whom wife pension ceases to be payable because of the employment income, or the combined

- income, referred to in subparagraph (f)(ii)—continues, but for that employment income or combined income, to be qualified for wife pension; and
- (ii) in the case of a person to whom pension PP (single) ceases to be payable, or who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that pension or benefit; and
 - (iii) in any other case—continues to be qualified for the payment referred to in section 1061ZA;

Schedule 6, item 18, page 60 (line 2), after paragraph (j), insert:

- or (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

Schedule 6, page 60 (after line 26), after item 19, insert:

19A After subsection 1061ZM(1)

Insert:

- (1A) If the person is qualified for a health care card under section 1061ZMA until a day (the *particular day*), subsection (1) has effect as if the reference to 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to 26 weeks starting on the particular day.
- (1B) If the person:
 - (a) was an employment-affected person because of receiving pension PP (single); and
 - (b) is qualified for a pensioner concession card under section 1061ZEA until a day (the *particular day*);
 subsection (1) has effect as if the reference to the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.
- (1C) If the person:
 - (a) is qualified for a health care card under section 1061ZMA until a particular day; and
 - (b) has, immediately before the commencement or increase mentioned in subsection (1), been a qualified recipient because of receiving newstart allowance, sickness allowance, widow allowance, partner allowance or youth allowance, other than while undertaking full-time study, for a continuous period of less than 52 weeks;
 the person is taken, for the purpose of the reference in paragraph (1)(c) to a continuous period of 52 weeks, to be receiving the allowance until the particular day.

19B Subsection 1061ZM(2)

After “referred to in subsection (1)”, insert “(including that subsection as modified by subsection (1A)) or the period provided by subsection (1B)”.

Schedule 6, item 20, page 60 (lines 31 and 32), omit subsection (1).

Schedule 6, item 20, page 61 (line 33), after paragraph (g), insert:

and (ga) the person:

- (i) in the case of a person who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that benefit; and
- (ii) in any other case—continues to be qualified for the payment referred to in subsection 1061ZK(5);

Schedule 6, item 20, page 62 (line 2), after paragraph (j), insert:

or (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

Schedule 6, page 62 (after line 13), after item 20, insert:

20A Subsection 1061ZN(1)

Omit “and 1061ZM”, substitute “, 1061ZM and 1061ZMA”.

Schedule 6, item 26, page 76 (after line 7), at the end of section 1073J, add:

(2) If:

- (a) a woman receiving wife pension is a working credit participant; and
- (b) the partner of the participant ceases to receive age pension or disability support pension on and from a day (the *cessation day*); and
- (c) the partner ceases to receive that pension:
 - (i) because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner); and
 - (ii) after any working credit balance of the partner is reduced to nil; and
- (d) as a result of the partner’s so ceasing to receive that pension, the participant ceases to be qualified for wife pension on and from the cessation day; and
- (e) the participant has a working credit balance greater than nil at the start of the instalment period of the participant in which the cessation day occurs; and
- (f) but for the employment income, or combined income, referred to in paragraph (c), the participant would have continued to be qualified for wife pension until the earlier of:
 - (i) a day determined under Division 8 or 9 of Part 3 of the Administration Act; or
 - (ii) the day on which the participant’s working credit balance is reduced to nil;

the participant is to be treated as if she had continued to be so qualified until the earlier of the days referred to in subparagraphs (f)(i) and (ii).

Division of bill: Senator Bishop moved—

- (1) That the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, as amended, be divided into two bills as follows:
 - (a) a bill (the first bill) dealing with participation requirements and penalties, comprising clauses 1 to 3 (with appropriate amendments) and Schedules 1, 4 and 5 of the original bill; and
 - (b) a bill (the second bill) dealing with additional funding for welfare measures comprising Schedules 2, 3, 6 and 7 of the original bill.
- (2) That the first bill be amended as follows:
 - (a) Renumber Schedule 4 as Schedule 2; and
 - (b) Renumber Schedule 5 as Schedule 3.
- (3) That the second bill be amended as follows:
 - (a) at the beginning of the bill, insert:

A Bill for an Act to amend the law relating to social security, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act (No. 2) 2002*.

2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

- (b) Renumber Schedule 2 as Schedule 1;
- (c) Renumber Schedule 3 as Schedule 2;
- (d) Renumber Schedule 6 as Schedule 3; and
- (e) Renumber Schedule 7 as Schedule 4.

Question put and passed.

The Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002, as amended, agreed to.

Senator Bishop moved—That the committee—

- (a) report the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002 with amendments; and
- (b) in respect of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, report progress and ask leave to sit again.

Question put and passed.

The Acting Deputy President (Senator Collins) resumed the chair and the Temporary Chair of Committees (Senator Lightfoot) reported that the committee:

- (a) had considered the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 and, pursuant to the instruction of the Senate, had divided the bill into two bills, the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 and the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002;
- (b) had agreed to the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002 with enacting words and provisions for titles and commencement, and with amendments; and
- (c) in respect of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, had made progress and asked leave to sit again.

On the motion of Senator Vanstone the report from the committee in respect of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002 was adopted and the bill read a third time.

Senator Vanstone moved—That, in respect of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, the committee have leave to sit again on the next day of sitting.

Question put and passed.

8 NOTICE

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook): To move on 9 December 2002—

- (1) That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 14 May 2003:
 An examination of the adequacy and effectiveness of the Government's foreign and trade policy strategy, with particular reference to the forthcoming Foreign and Trade Policy White Paper, *Advancing the National Interest*.
- (2) That, in examining this matter, the committee have regard to the following:

- (a) the merits of new policy directions identified by *Advancing the National Interest*;
- (b) whether *Advancing the National Interest* meets its stated objective of best using Australia's credentials and attributes to enhance Australia's national interests;
- (c) the strategy's consistency with Australia's international obligations; and
- (d) the process for implementation.

9 ORDER OF BUSINESS—REARRANGEMENT

The Special Minister of State (Senator Abetz) moved—That the order of consideration of government business orders of the day for the remainder of today be as follows:

No. 3 Bankruptcy Legislation Amendment Bill 2002.

No. 4 Plant Breeder's Rights Amendment Bill 2002.

Question put and passed.

10 BANKRUPTCY LEGISLATION AMENDMENT BILL 2002

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

In the committee

Bill, taken as a whole by leave, debated.

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

Schedule 1, item 127, page 29 (lines 19 and 20), omit the item, substitute:

127 Subsection 149S(1)

Omit "6 months", substitute "2 years".

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

Schedule 1, page 37 (after line 19), after item 172, insert:

172A Subsection 215A(1)

Repeal the subsection, substitute:

- (1) A resolution that is passed at a meeting of creditors and purports to:
 - (a) nominate one or more persons under subsection 204(4) to be a trustee or trustees; or
 - (b) appoint a person under subsection 220(1) to a vacant office of trustee of a deed of assignment, deed of arrangement or composition;
 is void unless the person or each of the persons:
 - (c) gave written consent before the meeting to act as a trustee of the deed or composition; and
 - (d) made a declaration in writing of the person's professional, business and personal relationships and connections (if any) with the debtor and with the creditor or creditors who proposed the resolution, and gave all persons entitled to vote on the resolution a reasonable opportunity to inspect the declaration.

Schedule 1, page 37 (after line 19), after item 172, insert:

172B Subsection 215A(1A)

Repeal the subsection, substitute:

- (1A) As soon as possible after the resolution is passed, each person (except the Official Trustee) nominated or appointed by the resolution must give to the Official Receiver a copy of the consent and the declaration that relates to that person.

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

Schedule 1, page 37 (after line 21), after item 173, insert:

173A After subsection 222(5)

Insert:

- (5A) Where the Court, on the application of the Inspector-General, the trustee or a creditor, is satisfied that:
- (a) if the vote or votes of a related creditor or related creditors on a proposed resolution at a meeting of creditors under this Part were disregarded, the proposed resolution:
 - (i) if in fact it was passed—would not have been passed; or
 - (ii) if in fact it was not passed—would have been passed; or
 - (iii) would have had to be decided on a casting vote; and
 - (b) the passing of the proposed resolution, or the failure to pass it:
 - (i) is contrary to the interests of the creditors as a whole or a class of the creditors as a whole; or
 - (ii) has prejudiced, or is reasonably likely to prejudice, the interests of the creditors who voted against the proposed resolution, or for it (as the case may be), to an extent that is unreasonable having regard to:
 - (A) the benefits resulting to the related creditor, or to some or all of the related creditors, from the resolution, or from the failure to pass the proposed resolution; and
 - (B) the nature of the relationship between the related creditor or related creditors and the debtor; and
 - (C) any other relevant matter;
- the Court may make an order declaring the deed or composition to be void or declaring any provision of the deed or composition to be void.
- (5B) In subsection (5A), *related creditor* means a creditor who is any of the following:
- (a) a relative, or de facto spouse, of the debtor;
 - (b) a relative of a spouse, or of a de facto spouse, of the debtor;
 - (c) a beneficiary under a trust of which the debtor is or has at any time been a trustee;
 - (d) a relative, or de facto spouse, of such a beneficiary;
 - (e) a relative of a spouse, or of a de facto spouse, of such a beneficiary;

- (f) a trustee of a trust under which the debtor is or has at any time been a beneficiary;
 - (g) a relative, or de facto spouse, of such a trustee;
 - (h) a relative of a spouse, or of a de facto spouse, of such a trustee.
- (5C) In subsection (5B), *relative*, in relation to a person, means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person.

Schedule 1, page 37 (after line 21), after item 173, insert:

173B Subsection 222(6)

Omit “(2) or (4)”, substitute “(2), (4) or (5A)”.

Schedule 1, page 37 (after line 21), after item 173, insert:

173C Subsection 222(7)

Omit “(2) or (4)”, substitute “(2), (4) or (5A)”.

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

Schedule 1, page 39 (after line 29), after item 177, insert:

177A At the end of section 237A

Add:

- (3) Unless the creditors, by special resolution, agree that such of the provisions of sections 120 to 124 (inclusive) as the creditors determine do not apply to a deed of arrangement, those provisions apply, subject to such modifications and adaptations (if any) as are prescribed, to and in relation to the deed of arrangement as if:
 - (a) a sequestration order had been made against the debtor on the day on which he or she executed the deed; and
 - (b) the trustee of the deed were the Official Trustee.

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

Schedule 1, page 41 (after line 27), after item 178, insert:

178A Subsection 265(8)

After “has contracted a debt”, insert “other than to meet necessary household or personal expenses”.

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

Schedule 1, page 42 (after line 3), after item 182, insert:

182A Section 271

Repeal the section.

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

Schedule 1, page 49 (after line 13), at the end of the Schedule, add:

Part 3—Amendments relating to bankrupt corporations

Corporations Act 2001

238 At the end of Division 6 of Part 5.7B

Insert:

588YA Liability of a company for the debts or liabilities of a related company

- (1) When a company is being wound up in insolvency, the liquidator, a creditor of the company, a nominee of a creditor of the company or the ASIC may apply to the Court for an order that a company that is or has been a related body corporate pay to the liquidator the whole or part of the amount of a debt of the insolvent company. The Court may make such an order if it is satisfied that it is just to do so.
- (2) In deciding whether it is just to make an order under subsection (1), the matters to which the Court shall have regard include:
 - (a) whether the company provided services for or on behalf of the related body corporate; and
 - (b) whether the company occupied premises which are owned by the related body corporate; and
 - (c) the extent to which the related body corporate took part in the management of the company; and
 - (d) the conduct of the related body corporate towards the creditors of the company generally and to the creditor to which the debt or liability relates; and
 - (e) the extent to which the circumstances that gave rise to the winding up of the company are attributable to the actions of the related body corporate or an officer or officers of the related body corporate; and
 - (f) any other relevant matters as the Court considers just and appropriate.
- (3) An order under this section may be subject to conditions.
- (4) An order shall not be made under this section if the only ground for making the order is that creditors of the company have relied on the fact that another company is or has been a related body corporate of the company.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

11 PLANT BREEDER'S RIGHTS AMENDMENT BILL 2002

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

In the committee

Bill, taken as a whole by leave, debated.

Senator Cherry moved the following amendments together by leave:

Schedule 1, page 3 (after line 14), after item 2, insert:

2A Subsection 3(1)

Insert:

cost-benefit analysis means a written report prepared in accordance with the Department of Finance *Handbook of Cost-benefit Analysis* (1991), as in force from time to time.

Schedule 1, page 3 (after line 14), after item 2, insert:

2B Subsection 3(1)

Insert:

genetically modified plant means a plant variety that is a genetically modified organism, as defined in the *Gene Technology Act 2000*.

Schedule 1, page 5 (after line 14), after item 6, insert:

6A At the end of subsection 26(2)

Add:

- ; (k) in the case of an application for a genetically modified plant—the results of a cost-benefit analysis undertaken by the applicant; and
- (l) the results of any tests conducted on the plant variety; and
- (m) information as to whether the variety has previously been released; and
- (n) information as to whether the variety has established itself in the wild; and
- (o) information as to whether the plant variety is likely to become an invasive species if released in Australia; and
- (p) details of the precise indigenous community or origin of the variety or species; and
- (q) details regarding historical and current indigenous customary uses of the variety or species; and
- (r) details regarding any traditional knowledge, innovations and practices relating to the variety or species; and
- (s) details regarding any indigenous rights and interests in ownership, including native title rights and interests (including whether the variety or species is found on lands that are subject to native title or in respect of which native title has been granted).

Debate ensued.

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

Senator Cherry moved the following amendments together by leave:

Schedule 1, page 3 (after line 14), after item 2, insert:

2D Subsection 3(1)

Insert:

traditional knowledge, innovations and practices means that knowledge and those innovations and practices that have been and continue to be developed and practiced by indigenous peoples in accordance with their traditions and customs.

Schedule 1, page 3 (after line 14), after item 2, insert:

2E Section 5

Repeal the section, substitute:

5 Definition of breeding

A reference in this Act to breeding is:

- (a) the process of developing new plant varieties by cross-pollination and selection;
- (b) in perennial plants, the process of discovering mutations in such plants, and then selecting and propagating from them so as to establish a new variety;
- (c) the process of discovering a plant variety that has grown from seed, which has new, distinct, uniform and stable characteristics, together with its use in selective propagation over 3 generations;
- (d) the process of deliberate mutation and propagation via tissue culture using *in vitro* techniques;

but may not include plant varieties and species that are the result of indigenous peoples' traditional knowledge, innovations and practices unless:

- (e) the prior informed consent of the holders of such knowledge, innovations and practices has been sought and received; and
- (f) equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices has been agreed to amongst the parties.

Debate ensued.

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

Senator Cherry moved the following amendments together by leave:

Schedule 1, page 7 (after line 28), after item 18, insert:

18A Subparagraph 37(2)(b)(i)

After “test growing”, insert “by an independent, qualified person who does not have any financial or contractual links with the applicant or grantee of a PBR”.

Schedule 1, page 7 (after line 28), after item 18, insert:

18B Subparagraph 37(2)(b)(ii)

Repeal the subparagraph.

Debate ensued.

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

Senator Cherry moved the following amendment:

Schedule 1, page 11 (after line 18), after item 37, insert:

37A After section 80

Insert:

80A Liability for damage caused by genetically modified plants

- (1) The grantee of a PBR in relation to a genetically modified plant and any user of that genetically modified plant shall be jointly and severally liable for any loss or damage caused by that genetically modified plant:
 - (a) to another plant variety through genetic contamination; or
 - (b) to the health of any individual.
- (2) An action for any loss or damage mentioned under subsection (1) may be commenced in any court of competent jurisdiction by:
 - (a) any person that has suffered the loss or damage; or
 - (b) any other person in the public interest.
- (3) Any person who brings an action under paragraph (2)(b) shall not be entitled to any award for damages, instead any damages awarded by a court shall be awarded to the Commonwealth.
- (4) For the purposes of this section *genetic contamination* means the transfer of genetic material from a genetically modified plant to another plant variety including (but not limited to):
 - (a) pollen dispersal by way of wind, insects or birds;
 - (b) seed dispersal:
 - (i) by shared sowing;
 - (ii) by cultivation and harvesting equipment which has not been thoroughly cleaned between uses;
 - (iii) by accidental spillage from haul trucks;
 - (iv) by the delayed germination of lost genetically modified seeds among organic crops grown in fields previously sown to genetically modified crops;
 - (v) by wind, water, birds or other animals;
 - (vi) by other methods of seed dispersal.

Debate ensued.

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

Senator Cherry moved the following amendments together by leave:

Schedule 1, page 6 (after line 32), after item 16, insert:

16A Subsection 35(1)

Repeal the subsection, substitute:

- (1) Any person who considers, in relation to an application for PBR in a plant variety, that his or her interests may or would be affected by the grant of that PBR to the applicant may lodge a written objection to the grant of PBR with the Secretary at any time after the giving of that public notice of

acceptance of the application and before the end of the period of 6 months starting with the public notice of that detailed description.

- (1A) The interests mentioned in subsection (1) include, but are not limited to, cultural, economic, social and environmental interests.

Schedule 1, page 6 (after line 32), after item 16, insert:

16B At the end of section 35

Add:

- (4) No fee or charge shall be imposed for an objection to an application for a PBR to the extent that the objection is based on cultural, social or environmental interests.

Note: Fees may be charged for an objection to the extent that it is made on economic interests under subparagraph 37(5)(b)(ii).

Schedule 1, item 20, page 8 (line 19), omit “in any other case”, substitute “to the extent that the objection is based on economic interests”.

Schedule 1, item 20, page 8 (line 24), omit “in any other case”, substitute “to the extent that the request is based on economic interests”.

Schedule 1, page 8 (after line 34), after item 22, insert:

22A At the end of section 42

Add:

- (4) If a plant variety is a traditional landrace plant variety or a variety which is essentially derived from such landrace plant variety, PBR must not be granted to that variety.
- (4A) For the purposes of this section, *traditional landrace plant variety* means a variety developed over millennia by selecting favourable characteristics within a cultivated crop species, or a variety that is the outcome of indigenous peoples’ traditional and customary innovations and practices. It may also be known as a “traditional variety”, “local variety” or “farmers’ variety”.
- (5) If an application for PBR deals with a plant variety which is a “discovered” variety as specified under section 5 of this Act:
- (a) on lands owned by the Crown; or
 - (b) in national parks; or
 - (c) in world heritage areas; or
 - (d) on Ramsar sites; or
 - (e) on lands in respect of which native title has been granted, that are subject to native title claims, or that can be shown to be the subject of rights and interests by indigenous peoples, including customary and other forms of ownership unless:
 - (i) the prior informed consent of the holders of such knowledge, innovations and practices has been sought and received; and
 - (ii) equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices has been agreed to amongst the parties.

PBR must not be granted to that variety.

- (5A) For the purposes of this section, *Ramsar site* means a site declared under the Convention on Wetlands of International Importance especially as Waterfowl Habitat done at Ramsar, Iran, on 2 February 1971, as in force for Australia immediately before the commencement of this Act.

Schedule 1, page 10 (after line 25), after item 31, insert:

31A After subsection 50(9)

Insert:

- (9A) The interests mentioned in subsections (8) and (9) include, but are not limited to, cultural, economic, social and environmental interests.

Schedule 1, page 10 (after line 25), after item 31, insert:

31B At the end of section 50

Add:

- (11) No fee or charge shall be imposed for an application to revoke a PBR to the extent that the application is based on cultural, social or environmental interests.

Note: Fees may be charged for an application to revoke a PBR, which is made on economic interests under subparagraph 37(5)(c)(ii).

Debate ensued.

At 3.45 pm: The President resumed the chair and the Temporary Chair of Committees (Senator Cook) reported progress.

12 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 4.04 pm till Monday, 18 November 2002 at 12.30 pm.

13 ATTENDANCE

Present, all senators except Senators Alston, Brown*, Coonan, Ellison, Ferguson, Forshaw, Harris, Hill, Hogg, Hutchins, Kemp, Knowles, Lees*, Minchin, Patterson, Ray, Sherry, Stott Despoja and Watson (* on leave).

HARRY EVANS
Clerk of the Senate