

2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 5

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1 MEETING OF SENATE

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

2 GOVERNMENT DOCUMENTS

The following government documents were tabled:

- Audio-Visual Copyright Society Ltd (Screenrights)—
Report for 2003-04.
Report for 2003-04—Errata.
- Australia-China Council—Report for 2003-04.
- Australian Fisheries Management Authority—Report for 2003-04.
- Australian Industry Development Corporation—Report for 2003-04.
- Australian Pesticides and Veterinary Medicines Authority—Report for 2003-04.
- Australian Postal Corporation (Australia Post)—Statement of corporate intent 2004-05 to 2006-07.
- Australian Public Service Commission—State of the Service—Report for 2003-04.
- Australian Sports Drug Agency—Report for 2003-04.
- Australian Submarine Corporation Pty Limited (known as ASC Pty Ltd after 1 October 2004)—Report for 2003-04.
- Bureau of Meteorology—Report for 2003-04.
- Copyright Agency Limited—Report for 2003-04.
- Cotton Research and Development Corporation—Report for 2003-04.
- Defence Housing Authority—Report for 2003-04.
- Director of National Parks—Report for 2003-04.
- Equal Opportunity for Women in the Workplace Agency—Report for 1 June 2003 to 31 May 2004.
- Fisheries Research and Development Corporation—Report for 2003-04.
- Forest and Wood Products Research and Development Corporation—Report for 2003-04.
- Grains Research and Development Corporation—Report for 2003-04.
- Grape and Wine Research and Development Corporation—Report for 2003-04.
- Human Rights and Equal Opportunity Commission—Report for 2003-04.
- International Labour Organisation—Submission report on ILO instruments adopted in June 2003.
- Land and Water Resources Research and Development Corporation (Land and Water Australia)—Report for 2003-04.
- Members of Parliament (Staff) Act 1984*—Report for 2003-04 on consultants engaged under section 4 of the Act.
- Military Superannuation and Benefits Board of Trustees—Report for 2003-04.
- Office of the Official Secretary to the Governor-General—Report for 2003-04.
- Professional Services Review [Medical and pharmaceutical services]—Report for 2003-04.
- Queensland Fisheries Joint Authority—Report for 2002-03.

Rural Industries Research and Development Corporation—Report for 2003-04.

Sugar Research and Development Corporation—Report for 2003-04.

Superannuation (Government Co-contribution for Low Income Earners) Act 2003—Quarterly report on the Government co-contribution scheme for the period 1 July to 30 September 2004.

Takeovers Panel—Report for 2003-04.

Telstra Corporation Limited—Equal employment opportunity program—Report for 2003-04.

United Nations—Optional Protocol to the International Covenant on Civil and Political Rights—Human Rights Committee—Communication no. 901/1999—Decision.

Veterans' Review Board—Report for 2003-04.

War Crimes Act 1945—Report for 2003-04 on the operation of the Act.

Workplace Relations Act 1996—Report for 2002 and 2003 on agreement making under the Act.

3 CONSIDERATION OF LEGISLATION

The Minister for Justice and Customs (Senator Ellison), at the request of the Minister for the Environment and Heritage (Senator Ian Campbell), amended government business notice of motion no. 1 by leave and, pursuant to notice, moved—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills:

Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Election Commitments) Bill 2004

Tax Laws Amendment (Retirement Villages) Bill 2004

Tax Laws Amendment (Small Business Measures) Bill 2004

Tax Laws Amendment (Superannuation Reporting) Bill 2004.

Question put and passed.

4 COPYRIGHT LEGISLATION AMENDMENT BILL 2004

The Minister for Justice and Customs (Senator Ellison), at the request of the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) and pursuant to notice, moved government business notice of motion no. 2—That the following bill be introduced:

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

Question put and passed.

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

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

Consideration of legislation: Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the next day of sitting which is more than 14 days after today.

5 FISHERIES (VALIDATION OF PLANS OF MANAGEMENT) BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for the Environment and Heritage (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) the bill was read a third time.

6 FAMILY LAW AMENDMENT (ANNUITIES) BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for the Environment and Heritage (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Minister for Justice and Customs (Senator Ellison) the bill was read a third time.

7 SURVEILLANCE DEVICES BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for the Environment and Heritage (Senator Ian Campbell)—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.

Senator Greig moved the following amendments together by leave:

Clause 6, page 9 (line 26), omit “3 years”, substitute “7 years”.

Clause 6, page 9 (line 30), omit “3 years”, substitute “7 years”.

Clause 6, page 10 (line 24), omit “3 years”, substitute “7 years”.

Clause 45, page 52 (line 36), omit “3 years”, substitute “7 years”.

Clause 45, page 54 (line 35), omit “3 years”, substitute “7 years”.

Schedule 1, item 7, page 80 (line 20), omit “3 years”, substitute “7 years”.

Debate ensued.

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

Senator Greig moved the following amendment:

Clause 6, page 11 (line 31) to page 12 (line 2), omit the definition of *tracking device authorisation*.

Debate ensued.

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

Question—That the bill be agreed to—divided in respect of clauses 39 and 40.

Clauses 39 and 40 agreed to.

Senator Greig moved the following amendment:

Clause 14, page 16 (line 14), at the end of subclause (1), add:

; and (d) it would be highly impractical to obtain the evidence referred to in paragraph (c) by any alternative means.

Debate ensued.

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

Senator Greig moved the following amendments together by leave:

Clause 14, page 16 (line 33), at the end of subparagraph (5)(a)(ii), add “, and the number of each kind of surveillance device sought to be authorised”.

Clause 17, page 19 (line 9), after “devices”, insert “, and the number of each kind of surveillance device,”.

Clause 33, page 34 (line 23), after “relates”, insert “, the number of each kind of surveillance device”.

Debate ensued.

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

Senator Greig moved the following amendments together by leave:

Clause 14, page 17 (after line 2), after subclause (5), insert:

(5A) An application must specify whether, during the 3 years prior to the date of the making of the application, any previous surveillance device warrant or emergency authorisation has been sought or issued under this Division in connection with the same alleged offence or offences, the same recovery order, or the same person or premises; and, if so, must further specify:

- (a) the number of previous warrants and emergency authorisations; and
- (b) the nature of each previous warrant and emergency authorisation, including the time period during which it was in force; and
- (c) the manner in which the evidence or information obtained from each previous warrant and emergency authorisation was used.

Clause 14, page 17 (after line 2), after subclause (5), insert:

- (5B) An application must specify whether, during the 3 years prior to the date of the making of the application, there has been, in connection with the same alleged offence or offences, the same recovery order, or the same person or premises, any use of a surveillance device without a warrant under Part 4 and if so, must further specify:
- (a) the nature of the previous surveillance, including the time period during which it was undertaken; and
 - (b) the manner in which the evidence or information obtained from the previous surveillance was used.

Debate ensued.

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

Senator Greig moved the following amendments together by leave:

- Clause 14, page 17 (line 3), after “believes”, insert “on reasonable grounds”.
- Clause 15, page 17 (line 19), after “believes”, insert “on reasonable grounds”.
- Clause 21, page 24 (line 31), after “believes”, insert “on reasonable grounds”.
- Clause 22, page 26 (line 16), after “believes”, insert “on reasonable grounds”.
- Clause 23, page 27 (line 2), after “believes”, insert “on reasonable grounds”.
- Clause 27, page 30 (line 5), after “believes”, insert “on reasonable grounds”.

Debate ensued.

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

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

8 QUESTIONS

Questions without notice were answered.

9 MINISTERS—ANSWERS TO QUESTIONS

Senator Carr moved—That the Senate take note of answers given by ministers to questions without notice asked by opposition senators today.

Debate ensued.

Question put and passed.

10 ADMINISTRATION—GOVERNMENT APPOINTMENTS—ANSWER TO QUESTION

Senator Murray moved—That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Murray today relating to government appointments.

Question put and passed.

11 PETITIONS

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

Senator Allison, from 20 petitioners, requesting that the Senate amend any proposed legislation relating to Medicare to ensure that equitable access to doctors' services is preserved.

Senator Bartlett, from 197 petitioners, requesting that the Senate support the Defence Amendment (Parliamentary approval for Australian involvement in overseas conflicts) Bill 2003.

Senator Eggleston, from 412 petitioners, requesting that the Senate reject any proposal to nominate the Ningaloo Marine Park and North West Cape for World Heritage listing until adequate consultation with the residents of Exmouth has occurred.

Senator Stephens, from 21 petitioners, requesting that the Senate take action to ensure that Mr Peter Qasim be granted permanent residency.

12 NOTICES

The Chair of the Select Committee on the Scafton Evidence (Senator Collins): To move on the next day of sitting—That the time for the presentation of the report of the Select Committee on the Scafton Evidence be extended to 9 December 2004. (*general business notice of motion no. 24*)

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Aboriginal and Torres Strait Islander Commission Act 1989*, and for other purposes. ***Aboriginal and Torres Strait Islander Commission Amendment Bill 2004.***

Senators Allison and Greig: To move on the next day of sitting—That the Senate—

- (a) notes that Wednesday, 1 December 2004 is World AIDS Day;
- (b) notes that:
 - (i) the Government has abrogated its leadership role in the area of domestic HIV/AIDS prevention by continuing to pursue a flawed process for developing the new HIV Strategy and continually delaying the development and release of the 5th National HIV Strategy,
 - (ii) in 2 decades the AIDS pandemic has claimed more than 20 million lives, 3 million of them in 2003, with little hope for improvement in 2004, as the pandemic continues to accelerate,
 - (iii) more than 38 million people are currently living with HIV/AIDS,
 - (iv) less than 20 per cent of people at high risk of HIV infection have access to proven prevention interventions which, if increased, could avert an estimated 29 million to 45 million new infections by 2010,
 - (v) in 2003 there were 5 million new HIV infections, of which women accounted for nearly half of all infected adults and nearly three-fifths of those in sub-Saharan Africa, and
 - (vi) half of all new HIV infections are among young people – four infections every minute – with young people particularly at risk, especially in Africa, where the infection rates for young women are two to three times those of young men; and

- (c) calls on the Government to:
- (i) expedite the conclusion of the 5th National HIV Strategy,
 - (ii) fulfil the agreed target of 0.7 per cent of gross national product for official development assistance, and
 - (iii) support the expansion of HIV/AIDS prevention activities both locally and internationally and ensure that they are integrated into comprehensive sexual and reproductive health programs. (*general business notice of motion no. 25*)

**13 CORPORATIONS AND FINANCIAL SERVICES—JOINT STATUTORY COMMITTEE—
APPOINTMENT**

Statement by leave: Senator Chapman, by leave, made a statement relating to the consideration of message no. 4 from the House of Representatives concerning the appointment of the Parliamentary Joint Committee on Corporations and Financial Services (*see entry no. 3, 29 November 2004*).

Leave was granted for the questions in respect of the appointment of the committee to be put again.

Question—That the amendment moved by Senator Chapman be agreed to—put and negatived.

Question—That the Senate concurs with the resolution relating to the appointment of the committee—put and passed.

14 POSTPONEMENTS

The following items of business were postponed:

Business of the Senate notice of motion no. 2 standing in the name of Senator Stott Despoja for today, proposing the reference of matters to the Legal and Constitutional References Committee, postponed till 1 December 2004.

General business notice of motion no. 16 standing in the name of Senator Brown for 1 December 2004, relating to the Tarkine wilderness, postponed till 8 December 2004.

General business notice of motion no. 17 standing in the name of Senator Brown for today, relating to Tasmanian forests, postponed till 7 December 2004.

General business notice of motion no. 20 standing in the name of Senator Brown for today, relating to Indigenous Australians on Palm Island, postponed till 1 December 2004.

15 NOTICE

Senator Nettle, by leave, gave a notice of motion as follows: To move on the next day of sitting—That the Senate—

- (a) notes that:
- (i) research and development of laser enrichment technology is being pursued at Lucas Heights, by a private company, Silex Systems Ltd,
 - (ii) this project is protected by a bilateral agreement with the Government of the United States of America, which was signed to enable the transfer of restricted enrichment technology and equipment for research and development,
 - (iii) Silex Systems Ltd has imported uranium for enrichment as part of this project, and

- (iv) the Australian Nuclear Science and Technology Organisation has processed radioactive waste produced as a result of these activities; and
- (b) calls on the Government to:
 - (i) recognise that the technology being developed by Silex Systems Ltd could constitute a threat to internationally agreed goals of nuclear non-proliferation, and
 - (ii) legislate to ban the development of uranium enrichment technologies in Australia. (*general business notice of motion no. 26*)

16 HISTORICAL EVENTS—EUREKA FLAG

Senator Marshall amended general business notice of motion no. 23 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the President be requested to arrange a standard outdoor size replica of the Eureka flag to be displayed on a flagstaff in public view in the main Senate entry foyer from dawn to dusk on Friday, 3 December 2004 in commemoration of the 150th anniversary of the Eureka Stockade.

Question put and passed.

17 CONSTITUTION ALTERATION (RIGHT TO STAND FOR PARLIAMENT—QUALIFICATION OF MEMBERS AND CANDIDATES) 1998 (NO. 2) [2002]—PROPOSED RESTORATION TO NOTICE PAPER

Senator Brown, by leave, amended general business notice of motion no. 22 to read as follows:

- (1) That so much of standing orders be suspended as would prevent this resolution having effect.
- (2) That the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002] be recommitted, and that consideration of the bill in committee of the whole be an order of the day for the next day of sitting.
- (3) That the committee consider the bill as reported by the committee of the whole on 15 May 2003.

Postponement: Senator Brown, by leave, moved—That general business notice of motion no. 22 be postponed till the next day of sitting.

Question put and passed.

18 ELECTORAL MATTERS—JOINT STANDING COMMITTEE—REFERENCE

Senator Murray, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 18—That the Joint Standing Committee on Electoral Matters inquire into and report, as soon as practicable, on:

- (a) the matter relating to electoral funding and disclosure, which was adopted by the committee in the 39th and 40th Parliaments, and any amendments to the Commonwealth Electoral Act necessary to improve disclosure of donations to political parties and candidates and the true source of those donations; and
- (b) submissions and evidence received by the committee in relation to those inquiries in the 39th and 40th Parliaments.

Question put and passed.

19 SOCIAL ISSUES—AUSTRALIAN PRISONS—DRUG USE

The Leader of the Australian Democrats (Senator Bartlett), at the request of Senator Allison and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 15—That the Senate—

- (a) acknowledges that drug use within Australian prisons poses a considerable health risk to prisoners and the broader community;
- (b) notes that:
 - (i) the Australian National Council on Drugs report, *Supply, demand and harm reduction strategies in Australian prisons: Implementation, cost and evaluation*, found that many injecting drug users spend considerable periods behind bars and that a history of drug use is far more common amongst prisoners than in the general population,
 - (ii) the report also identified a high prevalence of injecting drug use during incarceration and that high proportions of prison inmates report injecting drug use in the community once released, and
 - (iii) levels of hepatitis C in prisons are estimated to be up to 17 times greater than those in the general community; and
- (c) calls on the Government to work collaboratively with the states and territories to develop and fund:
 - (i) a hepatitis B vaccination program for prisoners,
 - (ii) voluntary programs for prisoners for testing, counselling and treatment for HIV and other blood-borne viral infections, and
 - (iii) a trial needle and syringe exchange program, with rigorous evaluation, in an Australian prison.

Question put and passed.

20 CRIMINAL CODE AMENDMENT (WORKPLACE DEATH AND SERIOUS INJURY) BILL 2004—RESTORATION TO NOTICE PAPER

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 21—

- (1) That so much of standing orders be suspended as would prevent this resolution having effect.
- (2) That the Criminal Code Amendment (Workplace Death and Serious Injury) Bill 2004 be restored to the *Notice Paper* and that consideration of the bill be resumed at the stage reached in the last session of the Parliament.

Question put and passed.

21 HEALTH—MATERNITY SERVICES

The Leader of the Australian Democrats (Senator Bartlett), at the request of Senator Allison, also on behalf of Senator Ridgeway, and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 19—That the Senate—

- (a) congratulates the Northern Territory Government on announcing a new maternity services package that will allow independently practicing midwives to practice in the Northern Territory by indemnifying them through the government health department;

- (b) notes that:
 - (i) community midwifery is the most appropriate care for 80 per cent of pregnant women, and
 - (ii) the inability of independently practicing midwives to obtain medical indemnity insurance has restricted the provision of optimal care and choice for Australian women during the birth process;
- (c) calls on the governments of other states and territories to follow the Northern Territory, which has joined South Australia and Western Australia in providing indemnity insurance arrangements which allow independent midwives to practice; and
- (d) calls on the Government to consider Medicare funding for independent midwifery consultations.

Question put and passed.

22 FOREIGN AFFAIRS—IRAQ

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 9—That the Senate—

- (a) notes that:
 - (i) the US-led assault on Fallujah has, according to the International Committee of the Red Cross, created a ‘humanitarian crisis’,
 - (ii) despite claims by the United States (US) appointed Prime Minister Allawi that ‘there have been no civilian casualties’, large numbers of civilians have been killed and injured in the attack,
 - (iii) at least one clinic has been bombed and a hospital looted and that Red Cross ambulances and a relief convoy have been refused access to Fallujah by the US-led Multinational Forces in breach of the Geneva Conventions,
 - (iv) destroying this ancient city will not bring peace and will increase support for the resistance, as shown by the shift of control of large areas of Ramadi, Samarra, Haditha, Baquba and other cities in the Sunni triangle to insurgent forces, and
 - (v) the recent study by US medical researchers at the John Hopkins Bloomberg School of Public Health and Columbia University which estimated that as many as 100 000 civilians may have died as a result of the US-led invasion and occupation of Iraq;
- (b) is concerned that elections in Iraq will be further delayed as a result of the actions of the Multinational Forces and the US-appointed Iraqi Government; and
- (c) calls on the Australian Government to:
 - (i) clarify the role of Australian Defence Force members in the planning of, and participation in, the assault on Fallujah,
 - (ii) reverse its policy of support for the US-led occupation of Iraq, and
 - (iii) bring the Australian troops home from Iraq.

Statements by leave: Senators George Campbell and Nettle, by leave, made statements relating to the motion.

Question put.

The Senate divided—

AYES, 2

Senators—
Brown Nettle (Teller)

NOES, 46

Senators—			
Abetz	Crossin	Hutchins	Patterson
Allison	Denman	Johnston	Payne
Barnett	Ellison	Kirk	Ray
Bartlett	Evans	Knowles	Ridgeway
Bishop	Faulkner	Ludwig	Scullion
Brandis	Ferguson	Macdonald, Sandy	Stephens
Buckland	Ferris	Mackay	Tchen
Campbell, G (Teller)	Fifield	Marshall	Troeth
Chapman	Forshaw	Mason	Watson
Cherry	Greig	McLucas	Webber
Colbeck	Hogg	Moore	
Collins	Humphries	Murray	

Question negatived.

Statement by leave: The Leader of the Australian Democrats (Senator Bartlett), by leave, made a statement relating to the motion.

23 DEPARTMENT OF PARLIAMENTARY SERVICES—REPORT FOR 2003-04

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

Department of Parliamentary Services—Report for 2003-04, including financial statements of the former Joint House Department, Department of the Parliamentary Library and Department of the Parliamentary Reporting Staff for the period 1 July 2003 to 31 January 2004.

24 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—DOCUMENT

The Minister for Justice and Customs (Senator Ellison) tabled the following document:

Parliament Act—Parliamentary Zone—Proposal, together with supporting documentation, for the replacement and extension of cooling towers at the rear of Old Parliament House.

Notice of motion: Senator Ellison, by leave, gave a notice of motion as follows: To move on the next day of sitting—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the replacement and extension of cooling towers at the rear of Old Parliament House.

25 DOCUMENTS

The following documents were tabled by the Clerk:

Australian Prudential Regulation Authority Act—Non-Confidentiality Determination No. 6 of 2004.

Class Rulings CR 2004/129 and CR 2004/130.

Currency Act—Currency (Perth Mint) Determination 2004 (No. 4).

Environment Protection and Biodiversity Conservation Act—Instrument amending list of exempt native specimens under section 303DB, dated 15 October 2004.

Export Control Act—Export Control (Orders) Regulations—Export Control (Fees) Amendment Orders 2004 (No. 4).

Goods and Services Tax Ruling GSTR 2004/8.

Product Rulings PR 2004/109-PR 2004/111.

Superannuation Industry (Supervision) Act—Request from Minister to APRA under section 230A, dated 23 January 2004.

Taxation Determinations—Notices of Withdrawal—

TD 93/124.

TD 94/57.

TD 95/24.

TD 96/31.

TD 97/13.

TD 98/14.

TD 1999/30.

Taxation Ruling TR 2004/16.

26 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 Justice and Customs (Senator Ellison), by leave, moved—That senators be discharged from and appointed to committees as follows:

Finance and Public Administration References Committee—

Appointed—Substitute member: Senator Murray to replace Senator Ridgeway for the committee's inquiry into government advertising

Foreign Affairs, Defence and Trade Legislation Committee—

Appointed—Substitute member: Senator Hogg to replace Senator Mackay for matters relating to the Defence portfolio.

Question put and passed.

27 CUSTOMS (PROHIBITED IMPORTS) AMENDMENT REGULATIONS 2004—MOTION FOR DISALLOWANCE

The Leader of the Australian Democrats (Senator Bartlett), pursuant to notice, moved business of the Senate notice of motion no. 1—That the Customs (Prohibited Imports) Amendment Regulations 2004 (No. 3), as contained in Statutory Rules 2004 No. 121 and made under the *Customs Act 1901*, be disallowed.

Debate ensued.

Question put and passed.

28 SURVEILLANCE DEVICES BILL 2004

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

In the committee

Consideration resumed of the bill.

The Leader of the Australian Democrats (Senator Bartlett) moved the following amendments together by leave:

Clause 17, page 19 (after line 13), after subparagraph (1)(b)(vi), insert:

- (via) if the warrant authorises the use of a surveillance device on premises, and access to the premises involves entry onto adjoining or other premises—details of the premises onto which entry is authorised for that purpose; and
- (vib) whether the warrant authorises the use of force; and

Clause 18, page 21 (after line 8), after subclause (2), insert:

(2A) For the avoidance of doubt:

- (a) a warrant does not authorise entry onto premises unless it specifically authorises entry onto premises and contains details of the premises, or a description of the kind of premises, onto which entry is authorised; and
- (b) a warrant does not authorise the use of force unless it specifically authorises the use of force.

Clause 25, page 28 (line 5), at the end of subparagraph (1)(b)(iv), add “, including any adjoining or other premises onto which entry is authorised for the purpose of accessing the premises or object from which the surveillance device is to be retrieved”.

Clause 25, page 28 (after line 5), after subparagraph (1)(b)(iv), insert:

- (iva) whether the warrant authorises the use of force; and

Clause 26, page 29 (after line 8), after subclause (1), insert:

(1A) For the avoidance of doubt:

- (a) a warrant does not authorise entry onto premises unless it specifically authorises entry onto premises and contains details of the premises, or a description of the kind of premises, onto which entry is authorised; and
- (b) a warrant does not authorise the use of force unless it specifically authorises the use of force.

Clause 32, page 34 (after line 3), after subclause (1), insert:

(1A) For the avoidance of doubt:

- (a) an emergency authorisation does not authorise entry onto premises unless it specifically authorises entry onto premises and contains details of the premises, or a description of the kind of premises, onto which entry is authorised; and
- (b) an emergency authorisation does not authorise the use of force unless it specifically authorises the use of force.

Debate ensued.

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

Senator Greig moved the following amendments together by leave:

Clause 19, page 23 (line 1), omit “An application may”, substitute “Subject to subsection (7), an application may”.

Clause 19, page 23 (after line 1), at the end of the clause, add:

- (7) The period during which a warrant, whether varied or not, is in force may not exceed 180 days and, if a warrant has been in force for a period of 180 days, a new warrant may not be issued for a period of 30 days following the expiration of the previous warrant.

Debate ensued.

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

Senator Greig moved the following amendment:

Clause 22, page 26 (line 6), after “lawfully”, insert “or unlawfully”.

Debate ensued.

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

Senator Greig moved the following amendments together by leave:

Clause 31, page 33 (line 26), at the end of paragraph (1)(c), add “, including the same details as would be required by section 17 in respect of a warrant”.

Clause 31, page 33 (after line 26), at the end of subclause (1), add:
; and (d) the reasons for granting the emergency authorisation.

Debate ensued.

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

Senator Greig moved the following amendment:

Clause 35, page 38 (lines 12 and 13), omit “, not being a manner that involves the destruction of that information”.

Debate ensued.

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

Senator Greig moved the following amendment:

Clause 44, page 50 (after line 10), after paragraph (1)(a), insert:
(aa) any information obtained from the use of a surveillance device without a warrant under Part 4; or

Debate ensued.

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

Bill further debated and agreed to.

Bill to be reported without amendment.

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

On the motion of the Minister for Justice and Customs (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.

29 **DEATH OF FORMER SENATOR JANINE HAINES, AM—STATEMENT BY LEAVE**

Senator Harradine, by leave, made a statement relating to the death of Janine Haines, AM, former senator for South Australia and Leader of the Australian Democrats.

30 **NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) BILL 2004**
NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) (CONSEQUENTIAL AMENDMENTS) BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for the Environment and Heritage (Senator Ian Campbell)—That these bills be now read a second time.

Debate resumed.

Senator Ludwig moved the following amendment in respect of the National Security Information (Criminal Proceedings) Bill 2004:

At the end of the motion, add “but the Senate calls upon the Government to implement a new federal protected disclosure regime, which will include appropriate protection for persons working with security sensitive information and national security matters consistent with the recommendations of the Australian Law Reform Commission”.

Debate ensued.

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

Main question, as amended, put and passed.

Bills read a second time.

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

In the committee

NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) BILL 2004—

Bill taken as a whole by leave.

Explanatory memorandum: The Minister for Justice and Customs (Senator Ellison) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Clause 7, page 5 (line 1), omit the definition of *national interests*.

Clause 8, page 6 (lines 5 and 6), omit “, law enforcement interests or national interests”, substitute “or law enforcement interests”.

Question—That the bill, as amended, be agreed to—divided in respect of clause 12.

Question—That clause 12 stand as printed—put and negatived.

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

Clause 7, page 5 (after line 6), after the definition of *security*, insert:

substantial adverse effect means not insubstantial, insignificant or trivial.

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

Clause 19, page 10 (line 28) to page 11 (line 2), omit subclause (2), substitute:

- (2) An order under section 31 does not prevent the court from later ordering that the federal criminal proceeding be stayed on a ground involving the same matter, including that an order made under section 31 would have a substantial adverse effect on a defendant's right to receive a fair hearing.

Senator Brown moved the following amendments together by leave:

Clause 25, page 16 (line 3), omit subclause (4).

Clause 27, page 20 (line 31), omit subclause (5).

Clause 28, page 22 (line 6), omit subclause (7).

Clause 29, page 24 (after line 21), at the end of the clause, add:

- (6) It is a requirement of a closed hearing that a court notify in open court at a time proximate to a closed hearing the reason or reasons for holding the closed hearing.

Debate ensued.

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

31 GOVERNMENT DOCUMENTS—CONSIDERATION

The government documents tabled earlier today (*see entry no. 2*) and general business orders of the day nos 164 to 171 relating to government documents were called on but no motion was moved.

32 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 7.30 pm till Wednesday, 1 December 2004 at 9.30 am.

33 ATTENDANCE

Present, all senators except Senators Cook*, Harris, Lundy, Murphy, Stott Despoja* and Tierney* (* on leave).

HARRY EVANS
Clerk of the Senate