



# Law and Justice Legislation Amendment Act 1991

No. 136 of 1991

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**SCHEDULE  
AMENDMENTS OF OTHER ACTS**



# **Law and Justice Legislation Amendment Act 1991**

**No. 136 of 1991**

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**An Act to amend various Acts administered by the  
Attorney-General relating to law and justice and other  
matters, and for related purposes**

*[Assented to 12 September 1991]*

The Parliament of Australia enacts:

## **PART 1—INTRODUCTORY**

### **Short title**

**1.** This Act may be cited as the *Law and Justice Legislation Amendment Act 1991*.

### **Commencement**

**2.(1)** Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

**(2)** Part 3 commences immediately after the commencement of the *Privacy Amendment Act 1990*.

**(3)** Part 4 commences on 24 September 1991.

**(4)** Subject to subsection (5), the amendments of the *Statutory Declarations Act 1959* made by this Act, and subsections 3(3) and (4), commence on a day to be fixed by Proclamation.

**(5)** If the amendments of the *Statutory Declarations Act 1959* and subsections 3(3) and (4) do not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

### **Application and savings**

**3.(1)** A direction under section 35A of the *Australian Capital Territory Supreme Court Act 1933* that was in force immediately before the commencement of this subsection has effect after that commencement as if it were a direction under that section as amended by this Act.

**(2)** The amendment of section 19 of the *Bills of Exchange Act 1909* made by this Act does not apply to bills of exchange and promissory notes in existence before the commencement of this subsection.

**(3)** A declaration under section 8 of the *Statutory Declarations Act 1959* that was in force immediately before the commencement of this subsection has effect after that commencement as if it were made under that section as amended by this Act.

**(4)** In spite of anything in this Act, a person who held office as a Commissioner for Declarations under the *Statutory Declarations Act 1959* immediately before the commencement of this subsection continues to hold that office after that commencement during the Attorney-General's pleasure.

## **PART 2—AMENDMENTS OF THE AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION ACT 1979**

### **Principal Act**

**4.** In this Part, “**Principal Act**” means the *Australian Security Intelligence Organization Act 1979*<sup>1</sup>.

### **Interpretation**

**5.** Section 4 of the Principal Act is amended:

**(a)** by inserting “, the *Crimes (Hostages) Act 1989*” after “1972”

in paragraph (c) of the definition of “politically motivated violence”;

- (b) by omitting the definitions of “State” and “Territory” and substituting respectively the following definitions:

“‘State’ includes the Australian Capital Territory and the Northern Territory;

‘Territory’ does not include the Australian Capital Territory or the Northern Territory;”;

- (c) by inserting the following definitions:

“‘certified copy’, in relation to a warrant or an instrument revoking a warrant, means a copy of the warrant or instrument that has been certified in writing by the Director-General or a Deputy Director-General to be a true copy of the warrant or instrument;

‘Deputy Director-General’ means an officer of the Organization who holds office as Deputy Director-General of Security;”.

#### **Inspection of postal articles**

6. Section 27 of the Principal Act is amended by omitting subsection (6) and substituting the following subsections:

“(6) Where the Director-General is informed under section 32 of the issue of a warrant under this section, the Director-General must:

- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and  
(b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

“(6A) Where:

- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section; and  
(b) the Director-General is informed under that section that the warrant has been revoked;

the Director-General must:

- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and  
(d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.”.

#### **Warrants for the performance of functions under paragraph 17(1)(e)**

7. Section 27A of the Principal Act is amended by omitting subsection (6) and substituting the following subsections:

“(6) Where the Director-General is informed under section 32 of the issue of a warrant under this section authorising the doing of acts

or things referred to in subsection 27(2) or (3), the Director-General must:

- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and
- (b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

“(6A) Where:

- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3); and
- (b) the Director-General is informed under section 32 that the warrant has been revoked;

the Director-General must:

- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
- (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.”.

#### **Part not to apply to certain assessments**

8. Section 36 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “13(1)” and substituting “56(1)”;
- (b) by omitting from subparagraph (1)(b)(iii) “53A(2)” and substituting “106(2)”;
- (c) by omitting from subparagraph (1)(b)(iii) “6(1)” and substituting “14(1)”.

#### **Review of findings**

9. Section 63 of the Principal Act is amended by omitting from subsection (1) “13(1)” and substituting “56(1)”.

### **PART 3—AMENDMENTS OF THE PRIVACY ACT 1988**

#### **Principal Act**

10. In this Part, “**Principal Act**” means the *Privacy Act 1988*.

#### **Interpretation**

11. Section 6 of the Principal Act is amended by omitting from the definition of “**credit reporting business**” in subsection (1) “, or for purposes that include the purpose, of” and substituting “of, or for purposes that include as the dominant purpose the purpose of,”.

**Credit providers**

12. Section 11B of the Principal Act is amended by adding at the end the following subsections:

“(5) Subject to subsection (6), while a person is acting as an agent of a credit provider in performing, on behalf of the credit provider, a task that is necessary:

- (a) in processing an application for a loan; or
- (b) in managing:
  - (i) a loan given by the credit provider; or
  - (ii) an account maintained by any person with the credit provider;

the first-mentioned person:

- (c) is taken, for the purposes of this Act, to be another credit provider; and
- (d) is subject to the same obligations under this Act as any other credit provider.

“(6) Nothing in this Act prevents such an agent of a credit provider disclosing to the credit provider, in the agent’s capacity as such an agent, a report (within the meaning of subsection 18N(9)) to which section 18N applies.

“(7) The reference in subsection (5) to the management of a loan does not include a reference to any act relating to the collection of payments that are overdue in respect of the loan.”.

**Access to credit information files and credit reports**

13. Section 18H of the Principal Act is amended by adding at the end the following subsection:

“(3) An individual’s rights of access under this section may also be exercised by a person (other than a credit provider, mortgage insurer or trade insurer) authorised, in writing, by the individual to exercise those rights on the individual’s behalf in connection with:

- (a) an application, or a proposed application, by the individual for a loan; or
- (b) the individual having sought advice in relation to a loan.”.

**Limits on disclosure of personal information by credit reporting agencies**

14. Section 18K of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “, in writing,”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) For the purposes of paragraph (1)(b), the individual’s agreement to the report being given to the credit provider must be in writing unless:

- (a) the report is requested for the purpose of assessing an application for commercial credit that was at first instance made orally; and
- (b) the application has not yet been made in writing.”;
- (c) by adding at the end of subsection (6) “(other than information that the credit reporting agency is permitted under section 18E to include in the individual’s credit information file)”.

**Limits on use by credit providers of present information contained in credit reports etc.**

15. Section 18L of the Principal Act is amended:

(a) by inserting after paragraph (1)(b) the following paragraph:

“(ba) the report was obtained under paragraph 18K(1)(a), (b) or (c) and the credit provider uses the report or information for the internal management purposes of the credit provider, being purposes directly related to the provision or management of loans by the credit provider; or”;

(b) by omitting from subsection (4) “, in writing,”;

(c) by inserting after subsection (4) the following subsection:

“(4A) For the purposes of subsection (4), the individual’s agreement to the information being obtained by the credit provider must be in writing unless:

- (a) the information is obtained for the purpose of assessing an application for credit that was at first instance made orally; and
- (b) the application has not yet been made in writing.”.

16. Section 18M of the Principal Act is repealed and the following section is substituted:

**Information to be given if an individual’s application for credit is refused**

“18M.(1) If:

- (a) a credit provider refuses an application by an individual for credit (including an application made jointly by that individual and one or more other persons); and
- (b) the refusal is based wholly or partly on information derived from a credit report relating to that individual that a credit reporting agency has given to the credit provider for the purpose of assessing the application;

the credit provider must give the individual a written notice:

(c) stating:

- (i) that the application has been refused; and
- (ii) that the refusal was based wholly or partly, as the case



requires, on information derived from a credit report relating to that individual that a credit reporting agency has given to the credit provider; and

- (iii) the name and address of the credit reporting agency; and
- (d) notifying that individual of his or her right under this Act to obtain access to his or her credit information file maintained by the credit reporting agency.

“(2) If:

- (a) a credit provider refuses an application by an individual for credit, being an application made jointly by that individual and one or more other persons; and
- (b) the refusal is based wholly or partly on information derived from a credit report relating to one of those other persons that a credit reporting agency has given to the credit provider for the purpose of assessing the application;

the credit provider must give to that individual a written notice stating:

- (c) that the application has been refused; and
- (d) that the refusal was based wholly or partly, as the case requires, on information derived from a credit report relating to that person that a credit reporting agency has given to the credit provider.”.

**Limits on disclosure by credit providers of personal information contained in reports relating to credit worthiness etc.**

17. Section 18N of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “, in writing.”;
- (b) by inserting after paragraph (1)(b) the following paragraphs:

“(ba) the report or information is disclosed:

- (i) to the guarantor of a loan provided by the credit provider to the individual concerned; and
- (ii) for any purpose related to the enforcement or proposed enforcement of the guarantee; or

(bb) the report or information is disclosed to a mortgage insurer:

- (i) for the purpose of assessing whether to provide insurance to, or the risk of providing insurance to, a credit provider in respect of mortgage credit given by the credit provider to the individual concerned or applied for by the individual concerned to the credit provider; or

- (ii) for the purpose of assessing the risk of the individual defaulting on mortgage credit in respect of which the mortgage insurer has provided insurance to the credit provider; or

- (iii) for any purpose arising under a contract for mortgage insurance that has been entered into between the credit provider and the mortgage insurer; or
- (bc) the report or information is disclosed:
  - (i) to a person or body generally recognised and accepted in the community as being a person appointed, or a body established, for the purpose of settling disputes between credit providers, acting in their capacity as credit providers, and their customers; and
  - (ii) for the purpose of settling a dispute between the credit provider and the individual concerned; or
- (bd) the report or information is disclosed:
  - (i) to an authority of a State or Territory whose functions include giving assistance (directly or indirectly) that facilitates the giving of mortgage credit to individuals; and
  - (ii) for the purpose of enabling the authority to determine the extent of assistance (if any) it will give in relation to the giving of mortgage credit to the individual concerned; or
- (be) the report or information:
  - (i) is disclosed to a person or body carrying on a business of supplying goods or services; and
  - (ii) is disclosed for the purpose of enabling that person or body to decide whether to accept, as payment for goods or services supplied to the individual concerned, payment by means of credit card or electronic transfer of funds; and
  - (iii) does not contain or include any personal information derived from a credit report, other than:
    - (A) information of a kind referred to in paragraph 18E(1)(a); and
    - (B) information as to whether the individual has a line of credit with the credit provider, or funds deposited with the credit provider, sufficient to meet the payment concerned; or
- (bf) the report or information:
  - (i) is disclosed to a person or body that is considering taking an assignment of, or discharging on the individual's behalf, a debt owed by the individual to the credit provider; and

(ii) does not contain or include any personal information derived from a credit report, other than:

(A) information of a kind referred to in paragraph 18E(1)(a); and

(B) information as to the amount of the debt, or the amount required to be paid in order to discharge the debt; or

(bg) the report or information is disclosed:

(i) in connection with an application for mortgage credit by the individual concerned, being credit that the credit provider proposes will be funded by means of an arrangement involving mortgage securitisation; and

(ii) to a person or body that carries on a business that is involved in the funding of mortgage credit by means of such arrangements; and

(iii) for the purpose of enabling the person or body to perform a task that is necessary in the funding of the mortgage credit concerned by means of that arrangement;

and the individual concerned has specifically agreed to the disclosure of the report or information to any such person or body for that purpose; or”;

(c) by inserting after paragraph (1)(g) the following paragraph:

“(ga) the report or information is given to:

(i) the individual; or

(ii) a person (other than a credit provider, mortgage insurer or trade insurer) authorised, in writing, by the individual to seek access to the report or information; or”;

(d) by inserting after subsection (1) the following subsections:

“(1A) For the purposes of paragraph (1)(b), the individual’s agreement to the disclosure of the report or information to another credit provider:

(a) must be in writing unless:

(i) the disclosure is sought for the purpose of assessing an application for credit or commercial credit that was initially made orally; and

(ii) the application has not yet been made in writing; and

(b) must be given to:

(i) the credit provider with possession or control of the report or information; or

(ii) the other credit provider.

“(1B) For the purposes of paragraph (1)(bg), the individual’s agreement to the disclosure of the report or information must be in writing unless:

- (a) the disclosure is sought for the purpose of enabling a person or body to perform a task that is necessary in order to fund, by means of an arrangement involving mortgage securitisation, mortgage credit for which an application has initially been made orally; and
- (b) the application has not yet been made in writing.

“(1C) Paragraph (1)(ga) does not affect the operation of paragraph (1)(g) in relation to an individual obtaining access to credit report under section 18H.”.

**Limits on use or disclosure by mortgage insurers or trade insurers of personal information contained in credit reports**

**18.** Section 18P of the Principal Act is amended:

- (a) by omitting from subsection (1) “assessing”;
- (b) by omitting paragraph (1)(a) and substituting the following paragraph:

“(a) assessing whether to provide insurance to, or the risk of providing insurance to, a credit provider in respect of mortgage credit given by the credit provider to the individual concerned or applied for by the individual concerned to the credit provider; or”;

- (c) by inserting in paragraph (1)(b) “assessing” before “the risk”;
- (d) by inserting after paragraph (1)(b) the following word and paragraph:

“; or (c) any purpose arising under the contract for mortgage insurance that has been entered into between a credit provider and the mortgage insurer;”;

- (e) by adding at the end the following subsection:

“(7) A reference in this section to a credit report is taken to include a reference to a report or information disclosed to a mortgage insurer under paragraph 18N(1)(bb).”.

**Limits on use by certain persons of personal information obtained by credit providers**

**19.** Section 18Q of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsection:

“(1A) A person or body that has obtained a report or information under paragraph 18N(1)(bg) must not use the report or information, or any personal information derived from the report or information, for any purpose other than the purpose

referred to in subparagraph 18N(1)(bg)(iii), unless use of the report or information, or the information so derived, for that other purpose is required or authorised by or under law.”;

- (b) by omitting from subsection (5) “paragraph 18N(1)(e) or (f)” and substituting “paragraph 18N(1)(bg), (e) or (f)”;
- (c) by omitting from subsection (6) “paragraph 18N(1)(d), (e) or (f)” and substituting “paragraph 18N(1)(bg), (d), (e) or (f)”;
- (d) by omitting from subsection (8) “paragraph 18N(1)(e) or (f)” and substituting “paragraph 18N(1)(bg), (e) or (f)”;
- (e) by inserting in subsection (9) “(1A),” after “subsection (1),”.

#### **Application of this Part**

20. Section 18V of the Principal Act is amended:

- (a) by omitting from subsections (2) and (3) “the commencement of this section” and substituting “25 February 1992”;
- (b) by omitting from subsection (3) “the day on which this section commenced” and substituting “25 February 1992”.

### **PART 4—AMENDMENT OF THE PRIVACY AMENDMENT ACT 1990**

21. The *Privacy Amendment Act 1990*<sup>3</sup> is amended by adding at the end the following section:

#### **Application of amendments**

“25. For the purposes of the Principal Act as amended by this Act, the doing of an act, or the engaging in of a practice, before 25 February 1992 is not taken to constitute:

- (a) a breach of the Code of Conduct; or
- (b) a breach of any provision of Part IIIA;

unless the doing of the act, or the engaging in of the practice, constitutes a breach of section 18H or 18J of the Principal Act as amended by this Act.”.

### **PART 5—AMENDMENTS OF THE TRADE PRACTICES ACT 1974**

#### **Principal Act**

22. In this Part, “Principal Act” means the *Trade Practices Act 1974*<sup>4</sup>.

23. After section 171 of the Principal Act the following section is inserted:

### **Charges by the Commission**

“171A.(1) The Commission may make a charge of an amount, or at a rate, determined by the Commission for:

- (a) supplying a person with material published by the Commission in the course of carrying out its functions or exercising its powers; or
- (b) permitting a person to attend or take part in a prescribed activity arranged by or on behalf of the Commission for the purpose of carrying out any of its functions.

“(2) Where:

- (a) the Commission provides a discretionary service for a person; and
  - (b) this Act does not otherwise provide for a charge for the service;
- the Commission may make a charge of such amount, or at such a rate, as is agreed between the Commission and the person.

“(3) In this section, a reference to the provision by the Commission of a discretionary service for a person is a reference to the doing of an act by the Commission, being a prescribed act that:

- (a) the Commission has power to do but is not required to do by or under any law; and
- (b) the Commission does at the person’s request.”.

### **Regulations**

**24.** Section 172 of the Principal Act is amended:

- (a) by adding at the end of paragraph (1)(a) “and”;
- (b) by adding at the end of subsection (1) the following word and paragraph:
  - “; and (d) the fees payable to the Commission on making a prescribed application, or giving a prescribed notice, to the Commission under this Act or the regulations.”.

### **Validation**

**25.** Any charge or fee paid to the Trade Practices Commission before the commencement of this section (other than a prescribed fee payable under the Principal Act) is taken, for all purposes, to have been payable under that Act.

**SCHEDULE**

**AMENDMENTS OF OTHER ACTS**

The following Acts are amended as set out below.

***Acts Interpretation Act 1901***

**Section 25B:**

After subsection (1), insert:

“(1A) Where a law of a State or Territory alters the name of a body (whether or not incorporated) or of an office, then, unless the contrary intention appears, a reference in an Act or an instrument made under an Act to the body or office under the former name is to be construed, except in relation to matters that occurred before the alteration, as a reference to the body or office under the new name.”.

**After section 33A:**

Insert:

**Participation in meetings by telephone etc.**

“33B.(1) This section applies to a body (whether or not incorporated) established by an Act if the Act requires or permits meetings of the members of the body to be held.

“(2) The body may permit its members to participate in a meeting, or all meetings, by:

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

“(3) A member who participates in a meeting under a permission under subsection (2) is taken to be present at the meeting.

“(4) This section has effect subject to any contrary intention in the Act.”.

***Administrative Appeals Tribunal Act 1975***

**Section 24U:**

Repeal the section.

***Australian Capital Territory Supreme Court Act 1933***

**Subsections 35A(1) and (2):**

Omit the subsections, substitute:

“(1) When the Supreme Court makes an order for the winding-up of a company, the Court may direct that subsection (2) applies to the winding-up.

**SCHEDULE—continued**

- “(2) If the Court gives a direction under subsection (1):
- (a) all proceedings in relation to the winding-up must be had and taken before the Master or the Registrar; and
  - (b) the Master and the Registrar have all the powers of the Court in relation to the winding-up; and
  - (c) the Master or the Registrar may refer to the Court any matter in relation to the winding-up that he or she thinks proper to be determined by the Court; and
  - (d) an appeal lies to the Court from any order, decree or direction of the Master or the Registrar made or given in relation to the winding-up.”.

***Bills of Exchange Act 1909***

**Section 19:**

Omit all the words from the beginning of the section to the end of the proviso to paragraph (a), substitute:

“(1) A bill that is not payable on demand falls due for payment on the last day of the time of payment fixed by the bill.

“(2) In working out the time of payment fixed by a bill the following rules apply:”.

***Commonwealth Legal Aid Act 1977***

**Title:**

Omit “National Legal Aid Representative Council and of a”.

**Subsection 3(1) (definitions of “Council”, “Council Chairperson” and “Council member”):**

Omit the definitions.

**Part II:**

Repeal the Part.

**Subsection 8(1):**

Omit “7”, substitute “8”.

**Heading to Part IIIA:**

Omit the heading.

**Section 10:**

Repeal the section.

**Sections 11 and 12 and subsections 13(1) and (2):**

Before “member” (wherever occurring) insert “Committee”.



**SCHEDULE—continued**

**Paragraphs 13(3)(a) and (b):**

Omit the paragraphs.

**Section 14:**

Repeal the section.

**Subsections 17(1), (2) and (3):**

- (a) Before “member” (wherever occurring) insert “Committee”.
- (b) Omit “relevant body” (wherever occurring), substitute “Committee”.

**Subsection 17(1):**

Omit “that body”, substitute “the Committee”.

**Subsection 17(4):**

Omit the subsection.

**Subsection 18(1):**

Omit the subsection.

**Subsection 18(3):**

Omit “(1) or”.

***Family Law Act 1975***

**Section 38V:**

Repeal the section.

***Federal Court of Australia Act 1976***

**Section 18V:**

Repeal the section.

***Law Officers Act 1964***

**Subsection 16(4):**

Omit the subsection, substitute:

“(4) Where:

- (a) a person has at any time, whether before or after the commencement of this subsection, served in the office of Solicitor-General for a period of at least 7 years, whether continuous or not; and
- (b) the person ceases to hold that office after that commencement, otherwise than under paragraph 10(b); and

**SCHEDULE—continued**

(c) the person is not entitled to payment of a pension under subsection (1);  
subsections (5) to (9), inclusive, apply in relation to the person.

“(4A) If a person is appointed as Solicitor-General and, at the time of the appointment, is receiving a pension because of the application of subsection (8), that pension ceases to be payable.”.

***Statutory Declarations Act 1959***

**Subsection 3(2):**

Omit the subsection.

**Section 4 (definitions of “Commissioner for Affidavits” and “Commissioner for Declarations”):**

Omit the definitions.

**Section 7:**

Omit “by virtue of”, substitute “under”.

**Section 8:**

Repeal the section, substitute:

**How statutory declaration is made**

“8. A statutory declaration made under this Act must:

- (a) be in the form in the Schedule; and
- (b) be made before a prescribed person.”.

**Section 9:**

Repeal the section.

**After section 13:**

Insert:

**Regulations**

“14. The Governor-General may make regulations, not inconsistent with this Act:

- (a) prescribing matters required or permitted by this Act to be prescribed; and
- (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.”.

*Law and Justice Legislation Amendment No. 136, 1991*

**NOTES**

1. No. 113, 1979, as amended. For previous amendments, see No. 182, 1979; No. 65, 1985; No. 122, 1986; Nos. 89 and 141, 1987; Nos. 121, 126 and 137, 1988; Nos. 63, 157 and 159, 1989; and Nos. 11, 75 and 115, 1990.
2. No. 119, 1988, as amended. For previous amendments, see Nos. 11, 75 and 116, 1990; Nos. 20, 28 and 122, 1991.
3. No. 116, 1990.
4. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No. 73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63, 73 and 165, 1984; No. 65, 1985; Nos. 8, 17 and 168, 1986; Nos. 23 and 141, 1987; Nos. 8, 20 and 87, 1988; Nos. 28 and 34, 1989; and Nos. 11 and 70, 1990.

*[Minister's second reading speech made in—  
House of Representatives on 29 May 1991  
Senate on 22 August 1991]*