INTERNET
The Journals for the Senate are available at

Proof and Official Hansards for the House of Representatives,
the Senate and committee hearings are available at

For searching purposes use
http://parlinfoweb.aph.gov.au

SITTING DAYS—2005

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>8, 9, 10</td>
</tr>
<tr>
<td>March</td>
<td>7, 8, 9, 10, 14, 15, 16, 17</td>
</tr>
<tr>
<td>May</td>
<td>10, 11, 12</td>
</tr>
<tr>
<td>June</td>
<td>14, 15, 16, 20, 21, 22, 23</td>
</tr>
<tr>
<td>August</td>
<td>9, 10, 11, 16, 17, 18</td>
</tr>
<tr>
<td>September</td>
<td>5, 6, 7, 8, 12, 13, 14, 15</td>
</tr>
<tr>
<td>October</td>
<td>4, 5, 6, 10, 11, 12, 13</td>
</tr>
<tr>
<td>November</td>
<td>3, 7, 8, 9, 10, 28, 29, 30</td>
</tr>
<tr>
<td>December</td>
<td>1, 2, 5, 6, 7, 8, 9</td>
</tr>
</tbody>
</table>

RADIO BROADCASTS
Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and
News Network radio stations, in the areas identified.

<table>
<thead>
<tr>
<th>Location</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>CANBERRA</td>
<td>103.9 FM</td>
</tr>
<tr>
<td>SYDNEY</td>
<td>630 AM</td>
</tr>
<tr>
<td>NEWCASTLE</td>
<td>1458 AM</td>
</tr>
<tr>
<td>GOSFORD</td>
<td>98.1 FM</td>
</tr>
<tr>
<td>BRISBANE</td>
<td>936 AM</td>
</tr>
<tr>
<td>GOLD COAST</td>
<td>95.7 FM</td>
</tr>
<tr>
<td>MELBOURNE</td>
<td>1026 AM</td>
</tr>
<tr>
<td>ADELAIDE</td>
<td>972 AM</td>
</tr>
<tr>
<td>PERTH</td>
<td>585 AM</td>
</tr>
<tr>
<td>HOBART</td>
<td>747 AM</td>
</tr>
<tr>
<td>NORTHERN TASMANIA</td>
<td>92.5 FM</td>
</tr>
<tr>
<td>DARWIN</td>
<td>102.5 FM</td>
</tr>
</tbody>
</table>
FORTY-FIRST PARLIAMENT
FIRST SESSION—FOURTH PERIOD

Governor-General

His Excellency Major-General Michael Jeffery, Companion in the Order of Australia, Commander of the Royal Victorian Order, Military Cross

Senate Officeholders

President—Senator the Hon. Paul Henry Calvert
Deputy President and Chairman of Committees—Senator John Joseph Hogg
Leader of the Government in the Senate—Senator the Hon. Robert Murray Hill
Deputy Leader of the Government in the Senate—Senator the Hon. Nicholas Hugh Minchin
Leader of the Opposition in the Senate—Senator Christopher Vaughan Evans
Deputy Leader of the Opposition in the Senate—Senator Stephen Michael Conroy
Manager of Government Business in the Senate—Senator the Hon. Christopher Martin Ellison
Manager of Opposition Business in the Senate—Senator Joseph William Ludwig

Senate Party Leaders and Whips

Leader of the Liberal Party of Australia—Senator the Hon. Robert Murray Hill
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Nicholas Hugh Minchin
Leader of The Nationals—Senator the Hon. Ronald Leslie Doyle Boswell
Deputy Leader of The Nationals—Senator the Hon. John Alexander Lindsay (Sandy) Macdonald
Leader of the Australian Labor Party—Senator Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy
Leader of the Australian Democrats—Senator Lynette Fay Allison
Leader of the Australian Greens—Senator Robert James Brown
Leader of the Family First Party—Senator Steve Fielding
Liberal Party of Australia Whips—Senators Jeannie Margaret Ferris and Alan Eggleston
Nationals Whip—Senator Julian John James McGauran
Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber
Australian Democrats Whip—Senator Andrew John Julian Bartlett
Australian Greens Whip—Senator Rachel Siewert

Printed by authority of the Senate
### Members of the Senate

<table>
<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
<th>Term expires</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abetz, Hon. Eric</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Adams, Judith</td>
<td>WA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Allison, Lynette Fay</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Barnett, Guy</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Bartlett, Andrew John Julian</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Bishop, Thomas Mark</td>
<td>WA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Boswell, Hon. Ronald Leslie Doyle</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>NATS</td>
</tr>
<tr>
<td>Brandis, George Henry</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Brown, Carol Louise</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Brown, Robert James</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>AG</td>
</tr>
<tr>
<td>Calvert, Hon. Paul Henry</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Campbell, George</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Campbell, Hon. Ian Gordon</td>
<td>WA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Carr, Kim John</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Chapman, Hedley Grant Pearson</td>
<td>SA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Colbeck, Hon. Richard Mansell</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Conroy, Stephen Michael</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Coonan, Hon. Helen Lloyd</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Crossin, Patricia Margaret</td>
<td>NT</td>
<td></td>
<td>ALP</td>
</tr>
<tr>
<td>Eggleston, Alan</td>
<td>WA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Ellison, Hon. Christopher Martin</td>
<td>WA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Evans, Christopher Vaughan</td>
<td>WA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Faulkner, Hon. John Philip</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Ferguson, Alan Baird</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Ferris, Jeannie Margaret</td>
<td>SA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Fielding, Steve</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>FF</td>
</tr>
<tr>
<td>Fierravanti-Wells, Concetta Anna</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Fifield, Mitchell Peter</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Forshaw, Michael George</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Hefferman, Hon. William Daniel</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Hill, Hon. Robert Murray</td>
<td>SA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Hogg, John Joseph</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Hughes, Gary John Joseph</td>
<td>ACT</td>
<td></td>
<td>LP</td>
</tr>
<tr>
<td>Hurley, Annette</td>
<td>SA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Hutchins, Stephen Patrick</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Johnston, David Albert Lloyd</td>
<td>WA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Joyce, Barnaby</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>NATS</td>
</tr>
<tr>
<td>Kemp, Hon. Charles Roderick</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Kirk, Linda Jean</td>
<td>SA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Lightfoot, Philip Ross</td>
<td>WA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Ludwig, Joseph William</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Lundy, Kate Alexandra</td>
<td>ACT</td>
<td></td>
<td>ALP</td>
</tr>
<tr>
<td>Macdonald, Hon. Ian Douglas</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Macdonald, John Alexander Lindsay</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>NATS</td>
</tr>
<tr>
<td>McEwen, Anne</td>
<td>SA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>McGauran, Julian John James</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>NATS</td>
</tr>
<tr>
<td>McLucas, Jan Elizabeth</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Marshall, Gavin Mark</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Senator</td>
<td>State or Territory</td>
<td>Term expires</td>
<td>Party</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>--------------------</td>
<td>--------------</td>
<td>--------</td>
</tr>
<tr>
<td>Mason, Brett John</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Milne, Christine</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>AG</td>
</tr>
<tr>
<td>Minchin, Hon. Nicholas Hugh</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Moore, Claire Mary</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Murray, Andrew James Marshall</td>
<td>WA</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Nash, Fiona</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>NATS</td>
</tr>
<tr>
<td>Nettle, Kerry Michelle</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>AG</td>
</tr>
<tr>
<td>O’Brien, Kerry Williams Kelso</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Parry, Stephen</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Patterson, Hon. Kay Christine Lesley</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Payne, Marie Ann</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Polley, Helen</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Ray, Hon. Robert Francis</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Ronaldson, Hon. Michael</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Santoro, Santo (1)</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Scullion, Nigel Gregory (3)</td>
<td>NT</td>
<td></td>
<td>CLP</td>
</tr>
<tr>
<td>Sherry, Hon. Nicholas John</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Siewert, Rachel</td>
<td>WA</td>
<td>30.6.2011</td>
<td>AG</td>
</tr>
<tr>
<td>Stephens, Ursula Mary</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Sterle, Glenn</td>
<td>WA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Stott Despoja, Natasha Jessica</td>
<td>SA</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Troeth, Hon. Judith Mary</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Trood, Russell</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Vanstone, Hon. Amanda Eloise</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Watson, John Odin Wentworth</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Webber, Ruth Stephanie</td>
<td>WA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Wong, Penelope Ying Yen</td>
<td>SA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Wortley, Dana</td>
<td>SA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
</tbody>
</table>

(1) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
(2) Chosen by the Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.
(3) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
(4) Chosen by the Parliament of Tasmania to fill a casual vacancy vice Susan Mary Mackay, resigned.

PARTY ABBREVIATIONS
AD—Australian Democrats; AG—Australian Greens; ALP—Australian Labor Party; CLP—Country Labor Party; FF—Family First Party; LP—Liberal Party of Australia; NATS—The Nationals

Heads of Parliamentary Departments
Clerk of the Senate—H Evans
Clerk of the House of Representatives—I C Harris
Secretary, Department of Parliamentary Services—H R Penfold QC
HOWARD MINISTRY

Prime Minister
Minister for Trade and Deputy Prime Minister
Treasurer
Minister for Transport and Regional Services
Minister for Defence and Leader of the Government in the Senate
Minister for Foreign Affairs
Minister for Health and Ageing and Leader of the House
Attorney-General
Minister for Finance and Administration, Deputy Leader of the Government in the Senate and Vice-President of the Executive Council
Minister for Agriculture, Fisheries and Forestry and Deputy Leader of the House
Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs
Minister for Education, Science and Training
Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues
Minister for Industry, Tourism and Resources
Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service
Minister for Communications, Information Technology and the Arts
Minister for the Environment and Heritage

The Hon. John Winston Howard MP
The Hon. Mark Anthony James Vaile MP
The Hon. Peter Howard Costello MP
The Hon. Warren Errol Truss MP
Senator the Hon. Robert Murray Hill
The Hon. Alexander John Gosse Downer MP
The Hon. Anthony John Abbott MP
The Hon. Philip Maxwell Ruddock MP
Senator the Hon. Nicholas Hugh Minchin
The Hon. Peter John McGauran MP
Senator the Hon. Amanda Eloise Vanstone
The Hon. Dr Brendan John Nelson MP
Senator the Hon. Kay Christine Lesley Patterson
The Hon. Ian Elgin Macfarlane MP
The Hon. Kevin James Andrews MP
Senator the Hon. Helen Lloyd Coonan
Senator the Hon. Ian Gordon Campbell

(The above ministers constitute the cabinet)
<table>
<thead>
<tr>
<th>Position</th>
<th>Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister for Justice and Customs and Manager of Government Business in the Senate</td>
<td>Senator the Hon. Christopher Martin Ellison</td>
</tr>
<tr>
<td>Minister for Fisheries, Forestry and Conservation</td>
<td>Senator the Hon. Ian Douglas Macdonald</td>
</tr>
<tr>
<td>Minister for the Arts and Sport</td>
<td>Senator the Hon. Charles Roderick Kemp</td>
</tr>
<tr>
<td>Minister for Human Services</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
</tr>
<tr>
<td>Minister for Citizenship and Multicultural Affairs</td>
<td>The Hon. John Kenneth Cobb MP</td>
</tr>
<tr>
<td>Minister for Revenue and Assistant Treasurer</td>
<td>The Hon. Malcolm Thomas Brough MP</td>
</tr>
<tr>
<td>Special Minister of State</td>
<td>Senator the Hon. Eric Abetz</td>
</tr>
<tr>
<td>Minister for Vocational and Technical Education and Minister Assisting the Prime Minister</td>
<td>The Hon. Gary Douglas Hardgrave MP</td>
</tr>
<tr>
<td>Minister for Ageing</td>
<td>The Hon. Julie Isabel Bishop MP</td>
</tr>
<tr>
<td>Minister for Small Business and Tourism</td>
<td>The Hon. Frances Esther Bailey MP</td>
</tr>
<tr>
<td>Minister for Local Government, Territories and Roads</td>
<td>The Hon. James Eric Lloyd MP</td>
</tr>
<tr>
<td>Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence</td>
<td>The Hon. De-Anne Margaret Kelly MP</td>
</tr>
<tr>
<td>Minister for Workforce Participation</td>
<td>The Hon. Peter Craig Dutton MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for Finance and Administration</td>
<td>The Hon. Dr Sharman Nancy Stone MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for Industry, Tourism and Resources</td>
<td>The Hon. Warren George Entsch MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for Health and Ageing</td>
<td>The Hon. Christopher Maurice Pyne MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for Defence</td>
<td>The Hon. Teresa Gambaro MP</td>
</tr>
<tr>
<td>Parliamentary Secretary (Trade)</td>
<td>Senator the Hon. John Alexander Lindsay (Sandy) Macdonald</td>
</tr>
<tr>
<td>Parliamentary Secretary (Foreign Affairs) and Parliamentary Secretary to the Minister for Immigration and Multicultural and Indigenous Affairs</td>
<td>The Hon. Bruce Fredrick Billson MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon. Gary Roy Nairn MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Treasurer</td>
<td>The Hon. Christopher John Pearce MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for the Environment and Heritage</td>
<td>The Hon. Gregory Andrew Hunt MP</td>
</tr>
<tr>
<td>Parliamentary Secretary (Children and Youth Affairs)</td>
<td>The Hon. Sussan Penelope Ley MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for Education, Science and Training</td>
<td>The Hon. Patrick Francis Farmer MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry</td>
<td>Senator the Hon. Richard Mansell Colbeck</td>
</tr>
</tbody>
</table>
SHADOW MINISTRY

Leader of the Opposition
The Hon. Kim Christian Beazley MP

Deputy Leader of the Opposition and Shadow Minister for Education, Training, Science and Research
Jennifer Louise Macklin MP

Leader of the Opposition in the Senate, Shadow Minister for Indigenous Affairs and Shadow Minister for Family and Community Services
Senator Christopher Vaughan Evans

Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology
Senator Stephen Michael Conroy

Shadow Minister for Health and Manager of Opposition Business in the House
Julia Eileen Gillard MP

Shadow Treasurer
Wayne Maxwell Swan MP

Shadow Attorney-General
Nicola Louise Roxon MP

Shadow Minister for Industry, Infrastructure and Industrial Relations
Stephen Francis Smith MP

Shadow Minister for Foreign Affairs and Trade and Shadow Minister for International Security
Kevin Michael Rudd MP

Shadow Minister for Defence
Robert Bruce McClelland MP

Shadow Minister for Regional Development
The Hon. Simon Findlay Crean MP

Shadow Minister for Primary Industries, Resources, Forestry and Tourism
Martin John Ferguson MP

Shadow Minister for Environment and Heritage, Shadow Minister for Water and Deputy Manager of Opposition Business in the House
Anthony Norman Albanese MP

Shadow Minister for Housing, Shadow Minister for Urban Development and Shadow Minister for Local Government and Territories
Senator Kim John Carr

Shadow Minister for Public Accountability and Shadow Minister for Human Services
Kelvin John Thomson MP

Shadow Minister for Finance
Lindsay James Tanner MP

Shadow Minister for Superannuation and Intergenerational Finance and Shadow Minister for Banking and Financial Services
Senator the Hon. Nicholas John Sherry

Shadow Minister for Child Care, Shadow Minister for Youth and Shadow Minister for Women
Tanya Joan Plibersek MP

Shadow Minister for Employment and Workforce Participation and Shadow Minister for Corporate Governance and Responsibility
Senator Penelope Ying Yen Wong

(The above are shadow cabinet ministers)
SHADOW MINISTRY—continued

Shadow Minister for Consumer Affairs and
Shadow Minister for Population Health and
Health Regulation
Laurie Donald Thomas Ferguson MP

Shadow Minister for Agriculture and Fisheries
Shadow Assistant Treasurer, Shadow Minister for
Revenue and Shadow Minister for Small
Business and Competition
Gavan Michael O’Connor MP
Joel Andrew Fitzgibbon MP

Shadow Minister for Transport
Senator Kerry Williams Kelso O’Brien

Shadow Minister for Sport and Recreation
Senator Kate Alexandra Lundy

Shadow Minister for Homeland Security and
Shadow Minister for Aviation and Transport
Security
The Hon. Archibald Ronald Bevis MP

Shadow Minister for Veterans’ Affairs and
Shadow Special Minister of State
Alan Peter Griffin MP

Shadow Minister for Defence Industry,
Procurement and Personnel
Senator Thomas Mark Bishop

Shadow Minister for Immigration
Anthony Stephen Burke MP

Shadow Minister for Aged Care, Disabilities and
Carers
Senator Jan Elizabeth McLucas

Shadow Minister for Justice and Customs and
Manager of Opposition Business in the Senate
Senator Joseph William Ludwig

Shadow Minister for Overseas Aid and Pacific
Island Affairs
Robert Charles Grant Sercombe MP

Shadow Parliamentary Secretary for
Reconciliation and the Arts
Peter Robert Garrett MP

Shadow Parliamentary Secretary to the Leader of
the Opposition
John Paul Murphy MP

Shadow Parliamentary Secretary for Defence and
Veterans’ Affairs
The Hon. Graham John Edwards MP

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

Shadow Parliamentary Secretary for Environment
and Heritage
Jennie George MP

Shadow Parliamentary Secretary for Industry,
Infrastructure and Industrial Relations
Bernard Fernando Ripoll MP

Shadow Parliamentary Secretary for Immigration
Ann Kathleen Corcoran MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Science and
Water
Senator Ursula Mary Stephens

Shadow Parliamentary Secretary for Northern
Australia and Indigenous Affairs
The Hon. Warren Edward Snowdon MP
## CONTENTS

**FRIDAY, 2 DECEMBER**

### Chamber
- **Notices**—
  - Presentation........................................................................................................................................... 1
- **Workplace Relations Amendment (Work Choices) Bill 2005**—
  - In Committee........................................................................................................................................ 1
  - Adoption of Report................................................................................................................................... 207
  - Third Reading.......................................................................................................................................... 207

### Questions on Notice
- **Minister for Health and Ageing: Overseas Travel**—(Question No. 716) ........................................... 223
- **Pregnancy Counselling Services**—(Question No. 1159)................................................................. 223
- **Defence: Depleted Uranium**—(Question No. 1338)......................................................................... 226
NOTICES

Presentation

Senator Watson to move 15 sitting day hence:

That the Building and Construction Industry Improvement Regulations 2005, as contained in Select Legislative Instrument 2005 No. 204 and made under the Building and Construction Industry Improvement Act 2005, be disallowed.

Senator Watson to move 15 sitting day hence:


Senator Bob Brown to move on Tuesday, 6 December:

That the Senate—

(a) abhors the hanging of Australian citizen Mr Nguyen Tuong Van in Singapore on Friday, 2 December 2005; and
(b) reiterates its opposition to the death penalty wherever in the world it is invoked.

Senator McLucas to move on the next day of sitting:

That, recognising that 3 December 2005 marks the International Day of People with Disability, the following matter be referred to the Community Affairs References Committee for inquiry and report by 17 August 2006:

An examination of the funding and operation of the Commonwealth-State/Territory Disability Agreement (CSTDA), including:

(a) an examination of the intent and effect of the three CSTDAs to date;
(b) the appropriateness or otherwise of current Commonwealth/state/territory joint funding arrangements, including an analysis of levels of unmet needs and in particular the unmet need for accommodation services and support;
(c) an examination of the ageing/disability interface with respect to health, aged care and other services including the problems of jurisdictional overlap and inefficiency; and
(d) an examination of alternative funding, jurisdiction and administrative arrangements including relevant examples from overseas.

Senator Bob Brown to move on Tuesday, 6 December:

That the Senate—

(a) requests the Government to seek an end to the persecution of Falun Gong members in China; and
(b) calls on the Government to lift restrictions on the Australian Falun Gong practitioners’ peaceful appeal outside the Chinese Embassy in Canberra.

WORKPLACE RELATIONS
AMENDMENT (WORK CHOICES)
BILL 2005

In Committee

Consideration resumed from 1 December.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that the bill, as amended, be agreed to.

Senator WONG (South Australia) (9.31 am)—I understand we have now moved to government amendment (160). From the Labor Party’s perspective, we consider most of this debate was gone through last night. The only point we wanted to make is that the supposed right that the government is introducing to refuse to work on public holidays is really only a theoretical right. In order to enforce it, an employee has to go through the dispute resolutions clause which is contained in the bill, which effectively leads nowhere because the commission does not have the power to compel even attendance at a con-
ference and the employer can choose not to attend the conference or discuss the matter and the commission has no power to order anything, so the only other avenue of remedy for an employee in this situation is to go to the Federal Magistrates Court—to take legal proceedings, which would be expensive. One wonders how it is that, for example, a non-English-speaking background woman who is employed in the cleaning industry is going to find the resources to employ a lawyer to take a matter to court because she has been asked unreasonably to work on Christmas Day.

I want to make the point—and Senator Joyce might not be aware of this—that there are a great many awards and agreements where employees do already have an existing right of refusal. I understand, for example, that in the retail industry there are a great many collective agreements where that is the case. What he has negotiated is a position that is in fact worse than that. But, as I said, from our perspective we are happy to vote on this reasonably soon. There was quite a lengthy debate on this last night.

Senator ABETZ (Tasmania—Special Minister of State) (9.33 am)—In moving amendment (160), I indicate that I have made an amendment to the introductory statement to proposed section 170AG as circulated. I forget the fancy French word I was taught last night, but I think it is ‘chapeau’. The words after ‘public holiday’—that is, ‘have regard to’—have been deleted and the words ‘regard must be had to’ have been inserted. I passed that to Senator Wong last night. I move:

(160) Schedule 1, item 72, page 343 (after line 4), after Division 1 of Part VIA, insert:

Division 1A—Entitlement to public holidays

170AF Definition of public holiday

In this Division:

public holiday means:

(a) each of these days:
   (i) 1 January (New Year’s Day);
   (ii) 26 January (Australia Day);
   (iii) Good Friday;
   (iv) Easter Monday;
   (v) 25 April (Anzac Day);
   (vi) 25 December (Christmas Day);
   (vii) 26 December (Boxing Day); and
(b) any other day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
   (i) a day declared by or under (or determined in accordance with a procedure under) the law of the State or Territory to be observed as a public holiday in substitution for a day named in paragraph (a); or
   (ii) a union picnic day; or
   (iii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday.

170AF Entitlement to public holidays

(1) An employee is entitled to a day off on a public holiday, subject to subsections (2) and (3).

(2) An employer may request an employee to work on a particular public holiday.

(3) The employee may refuse the request (and take the day off) if the employee has reasonable grounds for doing so.

(4) A term to the contrary in:
   (a) a workplace agreement; or
   (b) an award;
   has no effect.

Note: Compliance with this section is dealt with in Part VIII.
**170AG Reasonableness of refusal**

In determining whether an employee has reasonable grounds for refusing a request to work on a public holiday, regard must be had to:

(a) the nature of the work performed by the employee; and

(b) the type of employment (for example, whether full-time, part-time, casual or shift work); and

(c) the nature of the employer’s workplace or enterprise (including its operational requirements); and

(d) the employee’s reasons for refusing the request; and

(e) the employee’s personal circumstances (including family responsibilities); and

(f) whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday; and

(g) whether a workplace agreement, award, other industrial instrument, contract of employment or written guideline or policy that regulates the employee’s employment contemplates that the employer might require work on public holidays, or particular public holidays; and

(h) whether the employee has acknowledged or could reasonably expect that the employer might require work on public holidays, or particular public holidays; and

(i) the amount of notice in advance of the public holiday given by the employer when making the request; and

(j) the amount of notice in advance of the public holiday given by the employee in refusing the request; and

(k) whether an emergency or other unforeseen circumstances are involved; and

(l) any other relevant factors.

**170AH Model dispute resolution process**

The model dispute resolution process applies to a dispute under this Division.

Note: The model dispute resolution process is set out in Part VIIA.

**170AI Employer not to prejudice employee for reasonable refusal**

(1) An employer must not, for the reason, or for reasons including the reason, that an employee has refused on reasonable grounds to work on a particular public holiday, do or threaten to do any of the following:

(a) dismiss an employee;

(b) injure an employee in his or her employment;

(c) alter the position of an employee to the employee’s prejudice.

(2) Subsection (1) is a civil remedy provision.

**170AJ Penalties etc. for contravention of section 170AI**

(1) The Court, or the Federal Magistrates Court, on application by an eligible person, may make one or more of the following orders in relation to an employer who has contravened section 170AI:

(a) an order imposing a pecuniary penalty on the employer;

(b) an order requiring the employer to pay a specified amount to the employee as compensation for damage suffered by the employee as a result of the contravention;

(c) any other order that the court considers appropriate.

(2) The maximum pecuniary penalty under paragraph (1)(a) is 300 penalty units if the employer is a body corporate and otherwise 60 penalty units.

(3) The orders that may be made under paragraph (1)(c) include:

(a) injunctions; and
(b) any other orders that the court considers necessary to stop the conduct or remedy its effects.

(4) In this section:

eligible person means any of the following:

(a) a workplace inspector;

(b) an employee affected by the contravention;

(c) an organisation of employees that:

(i) has been requested in writing, by the employee concerned, to apply on the employee’s behalf; and

(ii) has a member employed by the employee’s employer; and

(iii) is entitled, under its eligibility rules, to represent the industrial interests of the employee in relation to work carried on by the employee for the employer;

(d) a person prescribed by the regulations for the purposes of this paragraph.

(5) A regulation prescribing persons for the purposes of paragraph (d) of the definition of eligible person may provide that a person is prescribed only in relation to circumstances specified in the regulation.

170AK Burden of proof in relation to reasonableness of refusal

In establishing, for the purposes of an application under section 170AJ, whether an employee’s refusal to work on a particular public holiday was on reasonable grounds, the burden of proof lies on the applicant.

170AI Proof not required of the reason for conduct

(1) If:

(a) in an application under section 170AJ relating to a person’s conduct, it is alleged that the conduct was, or is being, carried out for a particular reason; and

(b) for the person to carry out the conduct for that reason would constitute a contravention of section 170AI;

it is presumed, in proceedings under this Division arising from the application, that the conduct was, or is being, carried out for that reason, unless the person proves otherwise.

(2) This section does not apply in relation to the granting of an interim injunction.

Note: See section 354A for interim injunctions.

170AM Extraterritorial extension

(1) This Division, and the rest of this Act so far as it relates to this Division, extend:

(a) to an employee outside Australia who meets any of the conditions in this section; and

(b) to the employee’s employer (whether the employer is in or outside Australia); and

(c) to acts, omissions, matters and things relating to the employee (whether they are in or outside Australia).

Note: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.

In Australia’s exclusive economic zone

(2) One condition is that the employee is in Australia’s exclusive economic zone and either:

(a) is an employee of an Australian employer and is not prescribed by the regulations as an employee to whom this subsection does not apply; or

(d) a person prescribed by the regulations for the purposes of this paragraph.
(b) is an employee prescribed by the regulations as an employee to whom this subsection applies.

Note: The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the Legislative Instruments Act 2003.

On Australia’s continental shelf outside exclusive economic zone

(3) Another condition is that the employee:
(a) is outside the outer limits of Australia’s exclusive economic zone, but is in, on or over a part of Australia’s continental shelf that is prescribed by the regulations for the purposes of this subsection, in connection with the exploration of the continental shelf or the exploitation of its natural resources; and
(b) meets the requirements that are prescribed by the regulations for that part.

Note: The regulations may prescribe different requirements relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.

Definition

(4) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.

We had a substantial debate last night. For those who have just tuned into the debate, that which Senator Wong said was of course not correct. Last night I went ad nauseam through the right to refuse. Any employee will have the right to refuse to work on Christmas Day if he or she can indicate reasonable grounds for so doing. Those reasonable grounds are set out in 12 or 13 separate paragraphs in the legislation. In the event that an employer still requires an employee to work on a public holiday, if that employer has acted unreasonably, they will face a substantial monetary penalty—for a corporation, it is up to $33,000—which will act as a huge disincentive to an employer behaving in an unreasonable manner. That way, the vast majority of employees will have protection from being required to work on public holidays against their will. I thank Senator Joyce, Senator Fielding and others for their work that has drawn this matter to the government’s attention. With the amendment I have just moved, we have no doubt that the bill is a better bill. We thank those senators who made a contribution to ensuring that the bill has been improved.

Senator MURRAY (Western Australia) (9.36 am)—The difficulty we have with this amendment is the Prime Minister’s attitude. The Prime Minister has expressed quite clearly, as recently as during the dinner with the Australian Chamber of Commerce and Industry, a view that all these amendments are minor, with the implication being that they are insignificant. That probably stretches it too far, because I do not think even the Prime Minister would consider 98 pages and 337 amendments insignificant. But the fact is that we should not overstate the benefit that this amendment provides. Nevertheless, it would be ungenerous of me not to recognise that it improves the situation somewhat. I am glad that there has been some movement on the government side to address these issues.

I stand now, though, principally to move an amendment to the government amendment, because now is the proper time to do it. I move Democrat amendment (1) on sheet 4776:

(1) Amendment to Government amendment (160), page 31, Sheet Number PN271, after paragraph 170AG(k), insert:
(ka) whether the employee has previously been paid penalty rates by the employer and no longer will be paid penalty rates;

Effectively, this goes right to the heart of reasonable grounds for refusing to work on Christmas Day. I maintain that it is a reasonable ground, if that employee had previously been paid penalty rates by the same employer, to say: ‘If you’re not going to pay me penalty rates again then I don’t have to work on Christmas Day.’ That is a perfectly reasonable ground. Much of the debate in the media and some of the debate in the chamber has been about the issue of penalty rates. I am putting this fair and square, right at the middle, as a reasonable ground for rejection. I will be calling a division on this matter. I want to nail the government’s colours to the mast on this one. Given the length and extent of the debate we have had before, I do not think I need to explain the amendment much more but I would be glad to answer questions if people are unclear.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.38 am)—We had a fairly lengthy discussion on this last night and I do not want to just take up time for the sake of it but it is a very important issue. Family First are glad to have played some role in seeing some change in this area of public holidays, such as Anzac Day and Christmas Day, because they are sacrosanct. But the issue still at hand is that someone can refuse to take a day off and they will be paid the same as the person beside them who took the day off. They will have no opportunity to spend some time with their family like the other person does. There is no difference in what they get paid, but the issue to me and to Family First is family time. The issue is between having the ability to have ‘work and family’, not ‘work or family’, and being able to make sure that family time that would have been spent on those days if they are working can be made available somewhere else. That is the issue at hand.

Even though I am pleased to see that there has been some movement on this area of public holidays, and quite rightly so, it quite clearly shows that there was a problem with it. But there is still a problem and I would prefer to see this government amendment go through. I will support the government on this amendment but I would have preferred to have seen, in addition to that, the individual who works on a public holiday also given the choice of another day’s leave so they can spend time with their family. We have this dilemma today. We are all grappling with the issue of time. This will undermine public holidays without having that particular issue catered for.

Senator WONG (South Australia) (9.41 am)—There was one issue I wanted to raise. The amendment says that a term in an agreement or an award which is contrary to the provision itself has no effect. I want to clarify this with the minister: if there is an agreement—and there are a number, particularly in the retail sector—whereby an employee has an absolute right to refuse to work on a public holiday, will such a term be overridden by proposed section 170AF(4) so that the employee’s current right of refusal is pared back to what is in the bill?

Senator ABETZ (Tasmania—Special Minister of State) (9.41 am)—I will go through the contributions in order. Senator Murray has suggested the scenario where the employee has previously been paid penalty rates by the employer. I think that, in rough terms, is what Senator Murray is suggesting. I suppose we can think up all sorts of scenarios as to what could also be included. That is why we have got the catch-all of

CHAMBER
170AG(1), which says, ‘any other relevant factors.’ With due respect—and I think Senator Murray knows this—if that were a particular circumstance, the tribunal considering the matter would see that as another relevant factor to be taken into account.

We can then expand what is already a lengthy list of 12 items into a list of 24 or 30 items. You can all think of different scenarios to include and say: ‘This proves that we’re championing the public holiday more than the government because we’ve got this extra clause that we’re trying to put into the bill.’ But unless Senator Murray can assert that what he is saying is not covered by any other relevant factor then, with great respect, there is no need for his amendment. I would have thought that anybody who listened to the debate last night and then also this morning would understand that to force a division on this particular amendment when the totality of that amendment is covered by any other relevant factor is to score points and to make a point. I think Senator Murray indicated that he wanted to make a point, and good luck to him. That is what politics is all about but I am not sure that it is necessarily a good use of Senate time.

In relation to Senator Fielding’s contribution, I would respectfully say to him again, as I tried to last night, that under our proposal the employee has a right to refuse on reasonable grounds. Under his proposal, there is no such right to refuse. All you get is an extra day in lieu. Senator Fielding says: ‘That is so they can spend time with family,’ With great respect to Senator Fielding. If I were to get a day off in lieu, let us say mid-week, chances are the kids are going to be at school. If my other family members are older and no longer at school and in employment, they will probably have their own employment obligations on the day that I am given in substitution. Unless you can give the kids a day off school on that day in substitution that you are given by the employer, or, if you have grown-up children or uncles and aunts who can take off that particular day in substitution so you can all get together as a family, being given a day of substitution, with respect, is no guarantee that you will be able to spend time with the family. So, whilst I understand the sentiment, I do not think the mechanism will have the practical effect that has been suggested.

In relation to Senator Wong’s matter, which was the final contribution of this raft of comments by honourable senators, I am advised that this is beneficial legislation and therefore it is unlikely to be construed in the way suggested by Senator Wong. Clear words would be required to cut down express beneficial rights. We are getting that confirmed further, but that seems to be the overarching legal principle.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.46 am)—I thank the minister for the response. I think that he may have just overlooked that I said it was in addition to what the government has put forward about guaranteeing to refuse. What Family First was after was actually in addition to what the government is proposing. I think what the government has goes part of the way, and Family First was trying to complete, again, what the Prime Minister shared on a radio station in Melbourne. I think it really is important to look at this again. The Prime Minister was asked:

Prime Minister, is Anzac Day sacrosanct as a public holiday?
The Prime Minister responded:
   Absolutely.
The announcer said:
   Okay so it won’t be up for negotiation.
The Prime Minister responded:
   Absolutely not.
He was asked:
What about Christmas Day ...
The Prime Minister responded:
  Look, no, no, the answer’s no. Nothing is going to change in these areas.
He was then asked:
  But are they up for negotiation?
The Prime Minister responded:
  No, they’re not.
The announcer said:
  Well they’re not covered by your sort of....
The Prime Minister interrupted:
  Hang on. Just wait till the legislation comes out and people will find that what is the situation now will continue.
He was then asked:
  What about lunch breaks?
The Prime Minister responded:
  Same thing.
The announcer then said:
  That’s not what the Treasurer told me this week.
The Prime Minister responded:
  No, I’ve actually read that transcript; and he was simply making the point that some people work on public holidays now.
The announcer said:
  And some people negotiate their lunch times away. That’s what he said.
The Prime Minister responded:
  No, what we will do is we will preserve all the protections that are there now.
I repeat: ‘No, what we will do is we will preserve all the protections that are there now.’
He was then asked:
  Including lunch breaks and public holidays?
The Prime Minister responded:
  Of course we are not going to take those things away.
He was then asked:
  But are they going to be up for negotiation?
The Prime Minister responded:
  They are going to be in no different position than they are now....
Without the Family First additional amendment, they will be in a different position than they are now.

Senator MURRAY (Western Australia) (9.48 am)—I would be delighted if the minister’s answer to me was correct and clause 170AG(l), which says, ‘any other relevant factors’ applied to the extent that previous penalty rates were taken into account. Unfortunately, the bill is not explicit in that matter and therefore, if that was challenged by an employer, it would have to be determined in court, which would involve jurisprudence, costs and delays. It is just unreasonable. If the government accept the proposition that penalty rates have been previously paid and therefore employees are entitled to claim them for a new public holiday then they should put it into law. If they do not accept that then they will reject it.

Question put:
  That the amendment (Senator Murray’s) be agreed to.
The committee divided. [9.54 am]
(The Chairman—Senator JJ Hogg)
   Ayes............  31
   Noes............  34
   Majority........  3

AYES
   Allison, L.F.  Bartlett, A.J.J.
   Bishop, T.M.  Brown, B.J.
   Brown, C.L.  Campbell, G. *
   Carr, K.J.  Conroy, S.M.
   Crossin, P.M.  Evans, C.V.
   Faulkner, J.P.  Fielding, S.
   Forshaw, M.G.  Hogg, J.J.
   Hurley, A.  Kirk, L.
   Ludwig, J.W.  Marshall, G.
   McEwen, A.  McLucas, J.E.
   Moore, C.  Murray, A.J.M.
   Nettle, K.  Polley, H.
The question now is that government amendment (160) be agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (10.00 am)—If I may, I think Senator Wong, in fairness, still had an issue with this particular amendment. I am happy to go to the vote on it.

Senator WONG (South Australia) (10.00 am)—I wanted the minister to get back to me with advice as to the overriding of more beneficial provisions.

Senator ABETZ (Tasmania—Special Minister of State) (10.00 am)—Just before we move to the division, can I indicate to the Senate that Senator Wong has already mentioned that some awards or agreements provide an absolute right to refuse to work on public holidays. This legislation would not override that right. The more beneficial right in a workplace agreement or award would still have effect. That is my advice from the department.

Question agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (10.01 am)—On a quick procedural matter, so we do not overlook it, I think we are still looking at amendment (8) as well. I am wondering where Senator Wong is in relation to her deliberations on that one so we do not forget about it.

The TEMPORARY CHAIRMAN (Senator Ferguson)—It is further down the sheet, on page 8.

Senator MURRAY (Western Australia) (10.01 am)—Everyone will be pleased to know we are on page 2 of the running sheet and we only have another eight to go. I move amendment R(2A) on Democrat sheet 4765 revised:

R(2A) Schedule 1 item 9, page 25 (after line 28), insert:

(n) any application filed or proceedings otherwise commenced and not finally determined prior to the commencement of this Act;

(o) any cause of action which existed prior to the commencement of this Act.

I want to draw attention to the importance of this amendment, and I must confess to having needed professional advice on this one because it goes to matters which I would not normally be completely cognisant of. The person who has assisted me with this is barrister Shane Prince, and I am grateful for his assistance. He made a submission to the Senate inquiry. With respect to this particular amendment I am moving, the present legislation will act to rob people who are presently
before the state industrial courts and commissions of their existing legal rights. That is an extremely sensitive and important issue and I really do believe that we need to be very careful if that is the effect of the legislation.

Terminating existing legal rights would affect cases which involve the underpayment of wages and statutory entitlements, remedies for unfair contracts in Queensland and New South Wales and remedies for unfair dismissal which are presently before the courts. Clause 7C(1)(d) of the bill is intended to have the effect via section 109 of the Australian Constitution of invalidating section 106 of the Industrial Relations Act of New South Wales and other states, which allows the industrial relations commissions in court session to void or vary any contract whereby work is performed in an industry if it is unfair. It will preclude the exercise of any power by the commission under section 106 immediately, so any existing case will be frozen. Regardless of whether the government is of the opinion that existing cases are based on laws that it does not like and is now going to change, it is a basic principle of our legal system that existing cases are not interfered with and are allowed their full passage.

The commission, as a result of the act as it stands, will be unable to make any orders. This means that people in the middle of lengthy and costly litigation will immediately have their rights removed without any recourse. The practical effects will be devastating for individuals, many of whom are middle managers and those described in the media as battlers, and leave them with devastating legal costs, and there will be no remedy. Those people who are engaged in proceedings have obviously done nothing wrong, because they are acting in the terms of the law as it stands and they proceeded on the law as it stood. They must have had reasonable prospects to commence the proceedings under the Legal Profession Act. Through no fault of their own, without ever having been given the choice, they will be exposed to serious harm through this legislation once enacted. The government, as I understand it—

Senator Ronaldson—On a point of order, Mr Temporary Chairman, it has been brought to my attention that in the opposition advisers box is a lady by the name of Cath Bowtell from the ACTU, who has been advising Senator Wong for some 24 hours now. Is it allowable under the rules of the Senate to have someone other than a shadow minister adviser or staff member present in the advisers box area?

The TEMPORARY CHAIRMAN (Senator Ferguson)—I can rule on that point of order. The shadow minister and others are allowed to invite any people they like for advice in the advisers box, so they are not out of order.

Senator Ronaldson—I want to thank you very much, Mr Temporary Chairman. I am sure it is well noticed by those in the chamber who is advising—

Senator Ronaldson—On a point of order, Mr Temporary Chairman, it has been brought to my attention that in the opposition advisers box is a lady by the name of Cath Bowtell from the ACTU, who has been advising Senator Wong for some 24 hours now. Is it allowable under the rules of the Senate to have someone other than a shadow minister adviser or staff member present in the advisers box area?

The TEMPORARY CHAIRMAN—I can rule on that point of order. The shadow minister and others are allowed to invite any people they like for advice in the advisers box, so they are not out of order.

Senator Ronaldson—I want to thank you very much, Mr Temporary Chairman. I am sure it is well noticed by those in the chamber who is advising—

The TEMPORARY CHAIRMAN—Order! Senator Ronaldson, your point of order has been made.

Senator MURRAY—I wish to speak to the previous point of order that was made. I want to advise—

The TEMPORARY CHAIRMAN—I have ruled on that point of order, Senator Murray. I ruled it out of order.

Senator Wong—Let someone speak on it!

The TEMPORARY CHAIRMAN—Senator Murray had not stood at that stage, Senator Wong. I was responding to Senator Ronaldson and advising him that they are allowed to have any advisers they choose to have on this matter.
Friday, 2 December 2005

Senator WONG (South Australia) (10.07 am)—by leave—What an extraordinary display from Senator Ronaldson. This is from a government that takes its riding instructions from ACCI and from a government that sits there and says, ‘We’re not going to impose penalty rates because the bosses don’t want them.’ You do not want someone in the advisers box so you pick on an individual who is not elected to this place. If you want to pick on someone, Senator Ronaldson, pick on the opposition senators. Frankly, it is just another example of bullying and union-bashing by the other side. Senator Hill, you are the Leader of the Government in the Senate. You should draw him to order and you should be ashamed of yourselves. Yet again, we see two rules. They are happy to take their riding instructions from people like Rob Gerard. A donation of $1.1 million buys you a seat on the Reserve Bank board. Then the government pick on a couple of union officials because it looks good. People know that you govern for your mates—people like Rob Gerard and Peter Hendy in ACCI—but you want to pick on union officials. People know that this government governs for its mates. Senator Ronaldson has demonstrated that yet again.

Senator MURRAY (Western Australia) (10.08 am)—I should say that Ms Bowtell is known to me, as she is known to all sides of the Senate, as a professional, measured and objective contributor. Obviously, she is partisan in her values and to her employer, but I regard her highly as a person of quality and ability, as I do her equivalent counterpart in ACCI, Peter Anderson. He is an outstanding person and so is Cath Bowtell. I can assure you that I think the Senate is well served when people of that quality are available to assist the senators.

Senator Abetz—Bring back Peter!

Senator MURRAY—I take the minister’s interjection. Frankly, if Peter Anderson was in your box, I think it would do you credit. He is a chap of considerable acumen. I must say that I know the purpose of that remark: we are broadcasting live and it does make the point of tying the Labor Party to the ACTU and the campaign. But at the back of that is a real concern and it is something the government need to address—that is, they use the words ‘union’ and ‘union official’ as an epithet, as a slander and as a swearword. A good portion of those people represent the workers of Australia. A couple of million of them do that and, in days gone by, there were many more. I think people who represent workers, as do people who represent employers, deserve to be treated with respect for the people they represent. The spitting out of the term ‘union’ and ‘union official’ from the government benches in both houses as an epithet and as a slander reflects badly on the government, not on the opposition.

As some would know from my minority reports to the Joint Standing Committee on Electoral Matters, I am strongly of the view that the relations between the unions and the Labor Party need to be far better regularised, and I would move laws to quite radically change that relationship. I would never translate that attitude, which is a matter of political governance, to a condemnation of union people and union officials because they are union people and union officials. It is right, proper and a great credit to the history of our nation that the unions exist and are represented by passionate advocates. I must say that I get extremely distressed when I hear the coalition use the terms ‘unions’ and ‘union officials’ as if they are swearwords. Through you, Mr Temporary Chair, I apologise, Ms Bowtell, that you were exposed to some embarrassment on this occasion.

I return to my amendment. The point I was making is that this bill is concerning in
its effects if it acts to result in existing cases under way being frozen and the applicants being affected accordingly. I say through the chair to the minister—and perhaps the minister would make a note—that, if you end up rejecting my amendment and if the result is that individuals are in fact out of pocket, I think the government should consider a case for compensation under the special emergency compensation fund. I am not expecting you to answer on the floor, but perhaps you would make a note of the issue and address it.

As I understand it, the government are alert to this problem and are proposing to deal with this in regulation, but barrister Prince has advised us that it is important to note that no regulation can undo the effect that proposed section 7C(1)(d) will have once enacted, because of the operation of section 109 of the Constitution. I am not a barrister, so I take on faith what I have been told, but the explanation seems to make sense. He says to me that section 109 of the Constitution would operate automatically to invalidate section 106 of the New South Wales Industrial Relations Act once the Commonwealth covers a field by passing section 7C(1)(d) in its current form, assuming it to be otherwise constitutionally valid, of course. He uses as his reference the case of Wenn v AG (Vic) (1948) 77 CLR 84 at 120. Given that no regulation can be passed until after the act which authorises it to be made, a regulation could only ever seek to undo that which has already been done by the automatic effect of section 109 of the Constitution. Barrister Prince says that no subsequent law can change the characteristic of an earlier law for the purposes of the operation of section 109 of the Constitution. He cites the case of Wollongong University v Metwally (1984) 158 CLR 447.

That principle would apply with even greater force where the attempt to recharac-

terise the Commonwealth law is by regulation rather than by legislation. Even if the regulation clarifying the purpose of clause 7C(1)(d) were in effect before the enactment of clause 7C(1)(d), it would be unlikely to influence the meaning of the clause or change its effect. Not even parliament can bind future parliaments, let alone the executive, through regulation. The intention of schedule 1 of the bill and clause 7C(1)(d) would need to be determined by reference to the intention of the parliament when that legislation was enacted, not the intention of the executive beforehand.

As earlier submitted, there is only one way to prevent the serious injustice which will occur by operation of clause 7C(1)(d) on people involved in current litigation. That is to amend the clause to exclude from its scope any litigation which has been commenced prior to the bill being enacted. Our amendment R(2A) seeks to provide this remedy. We have obviously taken advice on this matter. I freely confess it is beyond the scope of my own expertise, but I am presenting it as a real problem and I would like a response from the minister.

Senator ABETZ (Tasmania—Special Minister of State) (10.15 am)—It is a pity that Senator Murray sat down. I do not know if anyone noticed but, whilst he was standing, the sun was shining on his head and it looked as though he had a halo. I am not sure he was deserving of it, but nevertheless that was the apparition.

Senator Murray—You were blinded from the top.

Senator ABETZ—I have the same difficulty in relation to reflections off foreheads these days—what I save on shampoo, I spend on soap!

First of all I would like to respond to Senator Wong’s Senator Sterlesque performance when things got a bit heated in an ex-
change earlier. Chances are I agree with Senator Wong: we govern for our mates—and they are the people of Australia, the sorts of mates that we saw at the Albert Hall in Launceston at the last federal election. They are the genuine people of Australia that we seek to govern for, and I unashamedly call them our mates. They are the people for whom we seek to govern.

I take Senator Murray’s point that to spit out ‘union official’ in a derogatory way may not necessarily be appropriate. But let us keep in mind that union officials continually assert that they represent the workers, when they represent 17 per cent of the workforce, and indeed 40 per cent of that 17 per cent vote for the coalition in any event. So those that make these grandiose claims that, because they are union officials, they represent all workers and have a mortgage on the interests of wage earners are of course wrong, given that 83 per cent of Australian workers have determined they do not want to be a member of a trade union.

Having said that, I will turn to the substance of Senator Murray’s amendment. It is one of those things, I suppose: when you have two lawyers, you are going to get three opinions. That is, of course, how lawyers make their money: by disagreeing with each other. My advice—and it is from the highest levels of the department—is that the matters to which Senator Murray refers can be fixed by regulation. It is the intention of the government to deal with these matters by regulation. The legal advice is that we have to be very careful in framing any language in relation to the transitional arrangements. In those circumstances I am advised that the amendment as drafted, because of its general application, may cause confusion about how it interacts with other parts of clause 7C, which excludes certain state laws.

The substance of what Senator Murray is saying is accepted by the government, but we say that we do not need a clause that covers everything, because it may not be appropriate that all such proceedings continue. For example, wage setting will move to the Fair Pay Commission and it would be inappropriate for state wage matters to continue after commencement. So there are those sorts of considerations as well. Therefore we believe the best way to handle it is by way of regulation. Senator Murray has legal advice that we cannot do that. I am advised by lawyers with better legal knowledge than mine, from the government side, and they assert with confidence that it can be done by regulation.

The matter that Senator Murray has addressed is a matter of concern to the government. It is being looked at and we intend to remedy it by regulation. My advice is that it can be done by regulation. The fact that Senator Murray has advice that it cannot be is, I suppose, an issue on which we will have to part company—also as on the basis that Senator Murray’s amendment seeks to cover the complete field, whereas on closer examination it might be better to allow a degree of flexibility. That is why regulation would be the best mechanism.

Senator MURRAY (Western Australia) (10.21 am)—I thank the minister for his answer. Like you, Minister, I am not in a position to argue these matters in a final legal sense. What I seek from you is an assurance to the chamber that, if for some reason I have got it right and your advisers have not, or if the matter falls somewhere in between, then, if applicants and defendants in matters before the courts end up incurring costs because cases are ended and there is no conclusion to them and they suffer some legal harm as a result, the government will consider those matters and will consider whether special compensation could be provided within
the existing remedies which are already available for special consideration.

Senator ABETZ (Tasmania—Special Minister of State) (10.22 am)—Very briefly, the circumstances which Senator Murray outlines are in general terms clearly undesirable. Regulation would allow those matters to hopefully be dealt with expeditiously. In relation to a fund, the government will consider that without any strings attached, and nobody should read too much into that. But, given the flexibility of being able to make regulations, I would like to think the potential for that to occur would be very narrow and it would only be in circumstances such as, for example, wage cases in the state commissions. But the points that Senator Murray makes are points that I can indicate, without divulging too much, have been raised in our own party room, so it is a matter of interest to the government. We have had feedback on it and we are seeking to address it.

Senator WONG (South Australia) (10.23 am)—I want to deal briefly with one of the comments of the minister about unions not representing many people. I make the point that the trade union movement, over the last 100 years, has advocated for improvements in conditions and wages, such as the eight-hour day and improvements in the minimum wage, which are of general application to unionists and non-unionists alike—a fact that seems to have escaped the mind of the government as it seeks to demonise anybody who calls themselves a representative of working people and is duly elected.

I will return to the issue that Senator Murray has raised. This is not the place for an esoteric legal argument, but we on this side of the chamber are concerned that there does not appear to be in this legislation something that prevents people’s current legal rights, obligations and entitlements from, in effect, being retrospectively altered mid action by the passage of the legislation. I take the minister’s comments that he has legal advice that this can be done by regulation. Our point on that is simply that surely that is a matter that should be in the substantive bill, given that there is so much else in terms of the operation of this legislation insofar as it relates to the exclusion of state legislation or other matters. We would have thought that it was appropriate for it to be in the bill. We are supportive of the amendment, and we note the minister’s assurance that this matter will be dealt with. I make the point that, if Senator Murray is correct and this is not able to be done by regulation, the government will then face difficulty bringing in an amendment later. We would effectively have to have retrospective legislation. It does not seem to us to be a very efficient way to make laws in this matter. So we are supportive of the amendment.

Senator SIEWERT (Western Australia) (10.25 am)—I wish to put on the record that the Australian Greens support the amendment.

Question negatived.

Senator MURRAY (Western Australia) (10.25 am)—by leave—I move Democrat amendments (2), (8), (9) and (75) on sheet 4765 revised:

(2) Schedule 1, item 10, page 26 (lines 1 to 4), omit subsection 7C(4).

(8) Schedule 1, item 10, page 29 (lines 26 and 27), omit subsection 7K(3).

(9) Schedule 1, item 10, page 30 (lines 25 and 26), omit subsection 7N(3).

(75) Schedule 4, item 2, page 674 (lines 16 to 19), omit subitem (1).

Mr Temporary Chairman, do you want to me to move amendment (56) at the same time?

The TEMPORARY CHAIRMAN (Senator Ferguson)—Senator Murray, I am advised that you can debate the amendments...
together but we will put amendment (56) separately.

Senator MURRAY—The amendments go to the question of executive powers. The legislation confers very broad law-making power upon the executive, including provisions which enable the executive to make, for example, regulations capable of overriding state laws as well as changing this proposed law. Provisions which authorise the executive to make such broad regulations and determinations include, for example, proposed new section 7C(4), which will permit the executive to make subordinate legislation, which purports to override state laws; proposed sections 7K(3) and 7N(3), which will permit the executive to change the wage setting procedures which are to be applied by the Australian Fair Pay Commission and, therefore, the way wage-setting decisions are made; proposed section 112, which grants the minister the power to declare the termination of a bargaining period which would only have to be gazetted and would not be subject to parliamentary scrutiny; and proposed section 2(1) of part 1 of schedule 4, which will enable the executive to make regulations which amend acts generally, including the Workplace Relations Act, as amended, at least during the period in which the transitional provisions will be applicable and with retrospective effect.

Insofar as these provisions permit subordinate legislation to change the law in the enabling act, the provisions can be referred to as what is quaintly known in the Scrutiny of Bills Committee, and indeed throughout the parliament, as Henry VIII clauses. As senators know, Henry VIII clauses effectively represent executive power without parliamentary oversight. The authorisation of executive law-making through parliament has been accepted by the High Court as constitutional, despite that pervasive doctrine of the separation of powers. Indeed, the High Court has upheld the delegation of very broad powers including, for example, where the executive was enabled to formulate and implement its own policies and the use of Henry VIII clauses. However, despite the extent to which authorisation has been accepted in our courts, some limitations do apply, including the delegated power remaining in the scope of those powers granted to the Commonwealth under the Constitution, which is the enumerated powers doctrine, and the delegation of power may be so vague or wide reaching that the delegation becomes invalid or the delegation amounts to an abdication of power.

Whether the delegation envisaged under this proposed legislation will comply with constitutional principle will depend upon the way in which the High Court may view the scope of regulation-making powers conferred upon the executive. For example, it seems at least possible that the High Court may accept arguments to the effect that these clauses enable the executive to impose its own intent upon the federal parliament, something which could be regarded as running contrary to the notion of parliamentary supremacy. Senators who have known me for a long time know that I extol the parliament above the executive. For those in the government and the alternative government who have a contrary view, we will always clash on that matter.

On the other hand, whether the delegation will comply with the enumerated powers doctrine will depend, firstly, upon the way the delegated power will be exercised by the executive and, secondly, upon the way in which the High Court will view the Commonwealth’s law-making powers in relation to industrial relations based predominantly on the corporations power.

Finally, whilst Professor Lane noted, based on past decisions of the High Court,
that delegated legislation is unlikely to fail for uncertainty of width, it is important to note that the court has made obiter comments to the effect that a threshold from wherein the law becomes invalid exists. The key point is that some of the measures left to regulations are so fundamental and potentially change the nature of the Australian work force in such major ways that parliament should have the opportunity to fully debate them before they come into effect and not be left with the second-best option of attempting to disallow measures already implemented through executive action.

Having put that on the record, let me amplify those remarks in this way: it is absolutely vital that the parliament always defends and protects itself from the usurping of its power by the executive. It is vital that the parliament remembers that it represents all Australians, and in the composition of the Senate, in particular, 95 per cent of the votes of Australians are reflected by the party representation that is in this chamber. In contrast, any government only represents, in terms of the votes that it achieves, a portion of the population. It is for that reason that parliaments always have to assert themselves for the people against a particular executive. That is the issue of principle.

The next issue is one of practicality. It is extremely unwise to give excessive powers to an individual in an executive circumstance. You can have a cabinet of 17 or 20 people and one of them may be of a character likely to abuse such powers. As soon as you give excessive powers to a person who happens to have that characteristic, you will end up with problems.

My third point is that no government can foresee what future government will hold these powers. Whilst the coalition may think these powers are terrific in the hands of this particular set of ministers, in the hands of another set of ministers from the same party group or even from another party, such as the Labor Party, you might find it an uncomfortable situation. Worse, the people affected might find it uncomfortable.

One of the things I liked very much about the Keating-Brereton 1993 act and the 1996 act—which I shall, probably a bit extravagantly, call the Reith-Murray act—was that they tried to assert that the enterprise should be the focus of much bargaining and that the matter should be resolved between employers and employees with limited third party interference. Giving excessive power in this sense allows for third party interference which has not been characterised in our system before. So I am alarmed about it and these amendments attempt to address that alarm.

Senator GEORGE CAMPBELL (New South Wales) (10.33 am)—I indicate on behalf of the opposition that we will support Senator Murray’s amendments. We also believe that this is again an unwelcome and unnecessary intrusion by the minister into the operation of the legislation in the same way as the prohibited content clause and a number of other clauses are. If the government are genuine about the argument that the relationship should be between employee and employer then the first people to stay out of the three party process should be the government.

Senator ABETZ (Tasmania—Special Minister of State) (10.34 am)—The government opposes this raft of amendments. The first lot covers one area and then amendment (56) covers another. But we are having a cognate debate, which will allow me to deal with the first issues. The proposed amendment would remove the provision which allows regulations to be made to identify state industrial laws that are excluded by the legislation. The provision is intended to allow the
government to address any doubt about whether a particular state law falls within the excluded laws described in the main parts of the provision. This amendment would remove the ability of the government to respond to any new state laws that attempt to regulate industrial relations. If the states were to make such laws, it could create confusion for employees and employers in the federal system about whether the laws applied to their employment relationship. Confusion about such laws would undermine a single unified system of workplace relations.

I now turn to amendment (56) and the reasons why we oppose it. The Workplace Relations Amendment (Work Choices) Bill 2005 provides for a new power for the Minister for Employment and Workplace Relations to quickly end protected industrial action by terminating a bargaining period where that action is having a significant adverse impact on the public interest. This power will be exercised according to the terms of the legislation—that is, where the industrial action is affecting or would adversely affect the employees or the employer negotiating party and threatens to endanger the life, the personal safety, health or welfare of the Australian population, or part of it, or to cause significant damage to the Australian economy or an important part of it.

The legislation is framed so that this power cannot be exercised for a trivial reason. This power will enable the minister to act swiftly in the public interest. The commission will be able to make a workplace determination for the parties to settle their differences. The directions that the minister can make following the termination reinforce that his powers are to be directed to dealing only with the immediate threat. The minister will only be able to make directions that are reasonably directed to removing or reducing the threat. The power is similar to powers available to state governments under their essential services legislation. It is instructive to know that state Labor governments are happy to live with such power, but those opposite would not give it to the federal government. Of course, the only reason for that is that it is of a different political colour.

I do not accept that as being Senator Murray’s rationale, which is consistent about this across the board, but it is very difficult for Labor senators to make this assertion as a matter of great principle when their state governments provide themselves with similar powers. Their robust argument is that if Liberal and National parties can do it it is bad, but if state Labor does it it is okay. That is not a consistent, robust or logical argument. This power is very tightly focused on the result of the industrial action rather than being available depending on the nature of the industry. It is an appropriate power which fairly balances the needs of the Australian population with a right for a particular employer or employees to take industrial action in support of enterprise bargaining.

The TEMPORARY CHAIRMAN (Senator Crossin)—The question is that the amendments moved by Senator Murray be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that division 7 stand as printed.

Senator KIRK (South Australia) (10.39 am)—In relation to Senator Murray’s amendment, we have concerns in relation to the fact that too much power is being given to the executive by this legislation. I am sure that the amendment that Senator Murray is moving is seeking to remedy this. Senator Wong will speak to this in more detail in a moment and, I am sure, will speak most eloquently. I am sure that Senator Murray’s amendment, had I had the opportunity to look at it in detail, is dealing with this also in a great deal of detail. When I sit down in my
chair, I will take the opportunity to read it most thoroughly, having been put in this position.

Senator Abetz—If I were you, I would circulate this Hansard.

Senator KIRK—Yes, I will, just to see what I said in these few minutes, having been put on the spot.

Senator Forshaw—It is very clear to me what you’re saying.

Senator KIRK—And then I will speak to Senator Forshaw, and he will know why I will be speaking to him. Then I will thank Senator Wong very much for the opportunity to say these few words.

Senator WONG (South Australia) (10.41 am)—It is always good when a highly qualified lawyer makes a contribution to the Senate. Thank you, Senator Kirk. Just to clarify, we are currently voting on division 7, unamended.

Senator Murray—Just to assist the shadow minister, we have dealt with, by leave, and voted on items (2), (8), (9) and (75) together. We are now dealing with item (56) on sheet 4765 revised. That matter commences—it is always difficult when you are dealing with various pages—at the bottom of page 23.

Senator Abetz—If I could I assist—and I confess that I get confused as well—the question on this will be that the division stand as printed. As a result, the government will be voting yes and those on the other side will be voting no. I think that clarifies the confusion.

The TEMPORARY CHAIRMAN—That is right. That question was put. I will put the question again: that division 7 stand as printed.

Question agreed to.

Senator MURRAY (Western Australia) (10.42 am)—I understood what was happening. It was just that people needed to find time around the sheets and the amendments. For those listening or taking note, the chamber has before it, if you add up all the government amendments and the non-government amendments, 150 pages worth of amendments, which we are flicking between. So I hope that those listening realise that it is quite difficult at times.

I wish to address the next section on the issue sheet. The chamber staff have suggested the way in which matters should be grouped. By leave, I would like to deal with that a little differently. I would like to put these amendments in two groups. The first group consists of item (4), (5), (6), (20) and (20C). The second group consists of (3), (7), (17A), (19), (19A), (20A) and (57). All of those are from sheet 4765 revised.

Leave granted.

The TEMPORARY CHAIRMAN—Senator Murray, perhaps for the sake of the chamber you might again want to tell us what the first batch consists of.

Senator MURRAY—by leave—I move Democrat amendments (4), (5), (6), (20) and R(20C) on sheet 4765 revised.

(4) Schedule 1, item 10, page 28 (line 20), after “conduct”, insert “annual”.

R(5) Schedule 1, item 10, page 29 (lines 1 to 12), omit section 7J, substitute:

7J AFPC’s wage-setting parameters

(1) The objective of the AFPC in performing its wage-setting function is to ensure that a safety net of fair minimum wages and conditions of employment is established and maintained while promoting economic prosperity of the people of Australia, having regard to the following:

(a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
(b) the capacity of the unemployed and low paid to obtain and remain in employment;

(c) economic factors, including levels of productivity and inflation, desirability of attaining a high level of employment, employment and competitiveness across the economy;

(d) relevant taxation and government transfer payments;

(e) the needs of the low paid.

(2) In performing its functions under this Part, the AFPC must have regard to the following:

(a) the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed;

(b) the need to support training arrangements through appropriate trainee wage provisions;

(c) the need, using a case-by-case approach, to protect the competitive position of young people in the labour market, to promote youth employment, youth skills and community standards and to assist in reducing youth unemployment, through appropriate wage provisions, including, where appropriate, junior wage provisions, taking into account:

(i) the extent of labour market disadvantage faced by young workers; and

(ii) the work value of young workers at different ages; and

(iii) the promotion of skills development and training of young workers to reduce their labour market disadvantages; and

(iv) the desirability of minimising discrimination on the basis of age in wage rates only to the extent necessary to further these objectives; and

(v) the structural efficiency principle; and

(vi) that 18 years of age is considered an adult;

(d) the need to provide a supported wage system for people with disabilities;

(e) the need to apply the principle of equal pay for work of equal value;

(f) the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

(3) For the purposes of paragraph (2)(f), trainee wage arrangements are not to be treated as constituting discrimination by reason of age if:

(a) they apply (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or

(b) they contain different rates of pay for adult and non-adult employees participating in an apprenticeship, cadetship or other similar work-based training arrangement.

(6) Schedule 1, item 10, page 29 (line 15), before “the” insert, “subject to paragraph 7I(a),”.

(20) Schedule 1, item 71, page 75 (after line 8), after Subdivision A, insert:

Subdivision AA—Indexation of minimum wage

90EA Indexation of minimum wage

(1) This Subdivision provides for the indexation of the minimum wage, in line with the Consumer Price Index, to start on commencement of this section.
(2) The indexation factor is to be worked out in accordance with section 1193 of the Social Security Act 1991.

(3) The rounding off of indexed amounts is to be worked out in accordance with section 1194 of the Social Security Act 1991.

R(20C) Schedule 1, item 71, page 70 (line 30), omit “21”, substitute “18”.

These are critical—of course, much in this bill is critical—amendments which refer to the Fair Pay Commission’s wage-setting parameters. At the outset the Democrats oppose the bill as a whole—and this is a point that the minister picked up on earlier in the debate—and we oppose replacing the independent Australian Industrial Relations Commission with the Orwellian named Australian Fair Pay Commission. We do not use the term ‘Orwellian’ as a piece of rhetoric, because we are not convinced that the legislation guarantees that the decisions of the commission will be fair, nor are we convinced that the outcome will be anything but a relative lowering of wages for poorer people over time.

The Democrats have long been supporters of the Industrial Relations Commission as an independent umpire, and we have long thought that its deliberations have resulted in good overall decisions with respect to wage increases. The Industrial Relations Commission—that is, the Australian Industrial Relations Commission, not the state commissions—has a brief to provide a safety net for employees who are unable to protect their own interests through enterprise bargaining and who need to achieve some real income growth. The commission must ensure that employment is not put at risk in doing so. The Workplace Relations Act already requires the Industrial Relations Commission to consider economic and employment issues. I refer you to sections 88 and 90.

The government have been boasting that workers real wages have increased—I think this is the latest figure—by 14.9 per cent since 1996. This is not entirely their doing, although they are perfectly entitled to take some credit for it. Under the Workplace Relations Act, which they plan to gut with this bill, the Australian Industrial Relations Commission and the national wage case have delivered these outcomes. Yet the government propose to take the Industrial Relations Commission’s power, trash it and introduce a low-pay commission that will reduce the very real wage increases that the Prime Minister has been boasting about.

It should be remembered—and this point has been made frequently by others in the debate—that the government argued on the basis that the minimum wage should be $50 a week less than it is now, which naturally, as a consequence, means that the 14.9 per cent increase in real wages would not have been achieved if the government had had its way. The government has refused to guarantee that there will not be a decline in real wages, and I understand that, because there will be a decline in real wages. The government will not index the minimum wage. They will not give any idea of compensation in this area. It is quite clear to me, on reading the bill and listening to what ministers say, that over time real wages not only are likely to but will deteriorate.

The aim of our amendments is to put fairness and balance back into the wage setting objectives. Our amendments put back the provisions of the current act that have served Australia well. The amendments insert into the objectives of the Fair Pay Commission the key aspect of section 88B(2) of the current Workplace Relations Act—that is, to ‘ensure that a safety net of fair minimum wages and conditions of employment is established and maintained while promoting economic prosperity’ in Australia.
The amendments put back provision 88B(2)(a) of the current Workplace Relations Act, which requires the Fair Pay Commission to have regard to ‘the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community’. That is a specific social objective. Alongside this government’s new criteria that the Fair Pay Commission have regard to employment and competitiveness—that government view is perfectly reasonable—our amendment puts back 88B(2)(b), which is, ‘economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment’.

As I have said before, the marks of a civilised, successful, first-world liberal democracy are high living standards, equitably shared wealth, and an egalitarian society that respects and protects the working poor and the disadvantaged and has advanced working conditions. It is critical that, when setting a minimum wage, we ensure that the disadvantaged, the vulnerable and those who have no bargaining power are still provided an adequate standard of living. That requires a balance between the level of wages able to attract work and the level of wages able to provide for a reasonable living standard.

Our amendment introduces a new provision (d) that would require the Fair Pay Commission to have regard to relevant taxation and government transfer payments. On my web site, for anyone who is interested in esoteric, technical tax matters, is a technical tax paper on the tax-free threshold. In that paper I argue, as I argue elsewhere, that you have to attend to the tax and welfare intersects as well as the wage intersects when you are referring to this matter of low wages.

This is an important point that was highlighted by the Australian Catholic Commission for Employment Relations. The interaction between wage setting, taxation and welfare payments is an important issue. The Democrats believe that the living standard and employment costs conundrum can be more effectively dealt with through the tax and welfare systems. The government, however, has continued to ignore calls by the Democrats to raise the tax-free threshold, although I am delighted to see that Mr Turnbull, in the lower house, has picked up on our view that at least a $10,000 tax-free threshold should apply. Long before he came into the parliament, we introduced that as an amendment to the Taxation Administration Act, and it was rejected. The fundamental problem is that people are taxed too high at low-income levels. People earning as little as $12,500 a year are paying income tax on half their wages—and $12,500 is the official poverty level recognised in this country.

Australia needs a much higher tax-free threshold. I argue for it to be at least $20,000 to match that which is already applicable for three million older Australians. Recent talk of tax reform suggests that the government have no intention of looking at the tax rates of the low paid and instead intend to continue to cut the tax rates of those who are wealthier. While the government continue to fail to address the tax issues for the low paid, tax and welfare payments should at least be taken into account when setting the minimum wage. The amendment also reinstates much of subsection 88B(3) of the current Workplace Relations Act, which would require the Fair Pay Commission to have regard to skills, training arrangements, people with disabilities and, critically, anti-discrimination provisions. The absence of anti-discrimination provisions in wage setting is of particular concern to the Human Rights and Equal Opportunities Commission. As HREOC pointed out, the potential exists for indirect discrimination to permeate the setting of minimum wages if, for example,
the parameters contain unstated bias about the value of certain skills and attributes.

We have also included an additional clause which requires the Fair Pay Commission to have regard to the need to apply the principle of equal pay for work of equal value. That is an iconic statement in Australia: equal pay for work of equal value. This is an important amendment, given that women employed in the work force full time still earn 15 per cent less than men doing the same work.

We have also included an important amendment which addresses an issue the Democrats have campaigned on for a long time—that is, youth wages. We do not believe that an 18-year-old adult should be paid youth wages. Youth wages are one of the worst examples of age based discrimination. The coalition—and Labor, I regret to say—argue that increasing youth wages will lead to higher youth unemployment. The same argument was used to justify paying women less than men. Young people are required to pay the same amount for food, rent and clothing as other Australians. Only full-time students have access to cheaper public transport and other concessions. Australia’s discriminatory practice is in breach of the Universal Declaration of Human Rights, which Australia signed in 1948, which declares that everyone has the right to equal pay for equal work without discrimination. Youth and junior rates have been abolished in Canada, Greece, Hungary, Japan, Mexico, Poland and Spain and they are severely restricted in many other countries. In the United States, junior rates apply for only three months and only to those under 20 years of age, whereas in Australia they can apply for in excess of that time.

Subclause (2)(c) of item (5) in combination with item (20C) will change the definition of ‘youth’ or ‘junior employee’ from 21 to 18. This requires the Fair Pay Commission to consider the need, using a case-by-case approach, to protect the competitive position of young people in the labour market; to promote youth employment, youth skills and community standards; and to assist in reducing youth unemployment through appropriate wage provisions. Those provision include, where appropriate, junior wages taking into account the extent of labour market disadvantage faced by young workers; the work value of young workers at different ages; the promotion of skills development and training of young workers to reduce their labour market disadvantages; the desirability of minimising discrimination on the basis of age in wage rates, only to the extent necessary to further these objectives; the structural efficiency principle; and that 18 years of age is considered an adult. (Extension of time granted)

Referring to items (4) and (6) in particular, the Fair Pay Commission reviews wages annually. Currently, wages are reviewed on an annual basis by the Australian Industrial Relations Commission. Under the bill, the Fair Pay Commission determines the timing and frequency of wage reviews as well as the scope and manner in which wage reviews are conducted and the date when wage setting decisions are to come into effect. Therefore, under the proposed new arrangements, wages will not necessarily be reviewed on an annual basis. The government have indicated that the first decision of the Fair Pay Commission will be in spring 2006. The Democrats are concerned that there is no time frame placed on the Fair Pay Commission to review the minimum wage after that date. A lot can happen in a year and the Democrats think we should put an onus on the Fair Pay Commission to review wages annually. We have included an amendment accordingly.

Item (20) refers to indexing the minimum wage to the CPI. We are moving an amend-
ment to provide an indexation of the minimum wage in line with the consumer price index in an attempt to keep the real wage at least at parity. The pension wage at present is indexed to AWOTE, which is a better and stronger measure. It seems odd to me that we would provide an indexation for pensioners but not for those on the lowest wage. The Democrats are moving this amendment accordingly—to keep the minimum wage in line with changes in living standard. CPI indexation already occurs, as I said, for government benefits and indeed the amendment refers to the processes undertaken in the Social Security Act.

**Senator WONG** (South Australia) (10.58 am)—As a suggestion as to how we might deal with this batch of amendments, from the Labor Party’s perspective, we would be happy to debate them together, although they will need to be put separately, obviously. It seems to us that the set of Democrat amendments which we are debating now, the next set and the subsequent amendments by the Australian Greens all fundamentally deal with the same issue. That does not obviate anybody’s right to speak specifically to any aspect when they are moved, but I propose to address my remarks to a number of the amendments.

What we are dealing with now really is the nub of the government’s agenda, which is one of lower wages. If this bill were accurately titled it would probably be called the Work No Choice Low-Wage Bill.

**Senator Abetz interjecting**—

But I think most Australians understand that one of the principles there should be in setting our minimum wage in this country is fairness. It is a great Australian tradition: a fair day’s pay for a fair day’s work. This government has the gall to come into this chamber and put forward a piece of legislation describing the new body that will set minimum wages in this country as a ‘fair pay commission’ but refuses to include any reference to fairness in the legislation in its objectives, which they voted against last night, or in the things to which the commission must have regard when setting minimum wages.

We will support Senator Murray’s amendment but, frankly, we think it is quite clear that the government will vote against it. It is quite clear why they will vote against it. They will vote against it because this government do not want fair wages. If they wanted fair wages, they would make sure this act was amended accordingly. They would not just go again with the spin, the rhetoric, the meaningless words of calling something a fair pay commission when it does not have to have regard to fairness or to the needs of the low paid.

If you look at what the government are now setting as the objectives in the legislation, the things to which the Fair Pay Commission—which I think should be called the ‘Low Pay Commission’—must have regard, what you will see is that they have removed references to things such as fairness and the needs of the low paid. What they focus on is competitiveness—employment and competitiveness across the economy. The minister last night said that there is nothing in the wage-setting parameters in the current legislation that this government are seeking to amend about the unemployed. He was wrong. There are clearly provisions in the act that do require the commission to look at the objective of maintaining a high level of employment in Australia.
Senator Abetz—It does not say ‘unemployment’.

Senator WONG—The minister says it does not say ‘unemployment’—if it makes reference to employment then somehow that cannot include unemployment. Again, that is another schoolboy debating tactic from Senator Abetz. The fact is that the use of the word ‘competitiveness’ is code for low pay. That is what it is. It is saying: ‘We want to make sure people are low paid, because they have to be competitive.’ Those of us who have been listening to the debate and who have been through the Senate committee know that competitiveness means: ‘We don’t want people priced out of the employment market—that is, we want them paid less.’

This legislation will take an axe to the minimum wage. It will take an axe to the minimum safety net that Australians have come to rely on. It appears from the government’s approach this week that the Howard government says, ‘If you are a Liberal party donor with a dodgy tax haven in the Virgin Islands, you deserve our help.’ But, if you are a working Australian relying on the minimum wage, the Howard government says, ‘Go tell someone who cares.’ I am sure Australians this week will compare the way the government treats working Australians this week will compare the way the Howard government treats working Australians through this bill with the way it treats big-time tax dodgers. It appears that, if you donate $1.1 million to the Liberal Party, you can buy yourself a seat on the Reserve Bank board. But, if you are a minimum wage worker in this country, you do not deserve to have the body that sets your wages ensure that they are fair. You do not deserve the protection of fairness. That is what this legislation means.

I want to talk briefly about what this means for the women of Australia. We know that 60 per cent of award dependent people in this country are women. If you start to drive down the minimum wage, you are attacking the wages and conditions of women workers—women who tend to be less unionised, who tend to work in less industrially strong sectors, often in service industries, in highly casualised part-time employment. There is not a lot of bargaining power. This government says, ‘Well, it is fantastic for them because they have the choice.’ I can tell you that when I worked, yes, as a union official and as a lawyer I acted for women such as cleaners, domestic cleaners, cleaners in hospitals and child-care workers. Not a lot of those women have a lot of industrial power and the ability to sit down and actually negotiate individually with their employer. For most of them, they just have to have the job. So they are extremely grateful for at least the minimum protections that the parliament can provide. These are the people in this government’s sights.

We come to the issue of pay equity. We know in this country that we still do not have equal pay. We know that women still trail men when it comes to the average wage. Unfortunately, the gap between women’s and men’s earnings in percentage terms is growing under this government, particularly in the low-wage area. A lot of these women have been left behind, and they will be left further behind under this government’s legislation. Under the bill that we are debating—and I note the Australian Greens have an amendment on this—where do the women who are award dependent go to try to get pay equity? They cannot go to the Australian Industrial Relations Commission. So where are they supposed to go—the Fair Pay Commission? We are trying to work out how you actually get before the Fair Pay Commission.

Senator Murray indicated that one of the concerns that he has, which we share, is that there is not a requirement for a guaranteed annual increase. That is what this government is saying to Australian workers: ‘You
know the annual wage increase you get through the national wage case? We’re not going to guarantee that. It is all left to the discretion of a few people we appoint to this commission. ‘That is, the unfair pay commission. So where are women who are award dependent supposed to go to try to get pay equity? We know from history, from fact, that the advances in terms of women’s wages have, by and large, come through the award safety net, have by and large come from unions making applications to the Australian Industrial Relations Commission for improvement in women’s earnings. That avenue has been closed. Under this legislation, the pay equity situation will become worse, not better.

The government not only ties the hands of award dependent workers; it ties the hands of women workers when it comes to bargaining as well. Apart from the range of provisions in this bill, which give the employer so much more power, which tilt the balance of power in employment relations massively and disproportionately towards the employer—apart from all that—this government says that you cannot pattern bargain, because that would be bad. So what they are essentially saying to women such as child-care workers in the thousands of child-care centres around the country is: ‘You’re not allowed to have a standard claim. All of you individually have to go to your boss and try to get a reasonable wage.’

Senator Hogg—Or they can have a standard AWA.

Senator WONG—But, as Senator Hogg quite rightly points out, the legislation I do not think prevents a standard AWA. So you get one rule for employers and one rule for employees. It is quite clear that, in this legislation, this government are saying: ‘We don’t want fairness in the Australian wage system. We want a situation where women workers are hamstrung in their ability to gain pay equity.’ It is an extraordinary position for the government to be taking.

There are a whole range of other matters in this bill which are bad for women workers and bad for low-paid workers. I am sure we will come to them. One could be something simple like the lack of protection for penalty rates and overtime. We all know that, in this legislation, this government is ensuring that overtime and penalty rates can be removed. That is bad for all workers because many workers, particularly low-paid workers, depend on overtime rates, shift allowances and penalty rates just to meet their mortgages. This is what they depend on; this is a part of their earnings on which they are reliant. This government is ensuring that they can lose them. That is what this legislation does. It ensures that low-paid workers can lose their penalty rates and overtime. So not only do low-paid workers not get a guarantee of an annual increase, a guarantee that wages will be fair or at least that fairness has to be something to which regard has to be had, they also get no guarantee of penalty rates, overtimes or shift allowances. What a slap in the face for Australian workers. What a slap in the face for Australian families.

One of the things the government does not understand, apart from the earnings implications of penalty rates and overtime, is that they act as breaks on irregular and unsocial hours. That is what they do. They act as breaks against antisocial hours. They say to employers: ‘If you want to make someone work extra shifts or at times which are antisocial, you’re going to have to pay a premium.’ So the employer gets compensated but there is also a disincentive for the employer to do that. All that can be removed under this legislation.

But I come back to the principal issue, which is one of fairness. Why is this gov-
ernment not guaranteeing an annual wage increase? Why does this government want fairness taken out of the act? Why does this government want to emphasise issues of competitiveness? I will tell you why. It does not want fairness in the act. It does not want a guaranteed annual wage increase. It wants to emphasise competitiveness because it wants to lower wages. It thinks the minimum wage is too high. Surprisingly we had some honest evidence before the Senate committee on this. We had a number of employers saying: ‘We think the minimum wage increases have been too high.’

I think the current federal minimum is $12.75 an hour. It is not a princely sum. It is certainly not an amount on which it is easy to raise a family and to keep yourself and your loved ones in reasonable comfort. It is not a big wage. There are a lot of people in this country on that wage. But instead of protecting them and ensuring we have a decent wage floor in this country, this government wants to strip it away and take fairness out of the equation. It is saying to Australian workers in this legislation: ‘We don’t think that your wages need to be set with regard to fairness.’ I think most Australians believe that a fair wage is a fundamentally Australian characteristic. I think most Australians understand that one of the things that have made this country good and that have ensured we have not gone down the American social model of the working poor is that we have accepted that, for the good of the community and for the nature of the sort of society we are, we set a fair minimum wage. We do not want working poor in Australia. This is about the sort of Australia we are. We are a country that believes that there should be a decent floor and that there should be a fair wage set. People are entitled to fair wages for a fair day’s work—decent pay. These are Australian values, and this is what this government are seeking to strip away. They are taking an axe to the minimum wage. There is no other explanation for their complete opposition to amendments moved in this place to ensure that fairness is inserted into the act. They can come here and run as much spin and say as many words as they like but they cannot explain to the Australian people this fundamental issue of why this new Fair Pay Commission does not have to set a fair minimum wage.

I think most Australians will find it appalling that this government, which calls itself a government for all the people, is so clearly governing for those who have power and money. The example of Mr Gerard stands in stark contrast to the treatment of Australian workers that is being meted out by this legislation, by the intransigence of this government, by its refusal to ensure that the bill that is passed by this parliament has regard to fairness and by its refusal to ensure that a fair minimum wage remains a cornerstone of the Australian system. That is what it is doing.

(Time expired)

Senator MARSHALL (Victoria) (11.13 am)—Senator Murray’s amendments go to the very heart of the policy intention of the bill before us today. Senator Wong and Senator Murray are dead right when they say that the intention of this bill and the effect of this bill will be to lower wages for all working Australians.

Senator Ian Macdonald—We have a speaker from one side and a speaker from the other.

Honourable senators interjecting—

The TEMPORARY CHAIRMAN (Senator Crossin)—Senator Marshall, I will just stop you there for a moment. Minister Macdonald, if you want to say something, we would ask you to come to your seat.

Senator Ian Macdonald—You have kindly given me the invitation to raise a point of order.
The TEMPORARY CHAIRMAN—You keep speaking out of your chair, Minister.

Senator Ian Macdonald—I thought this was my chair.

The TEMPORARY CHAIRMAN—You are there now, Minister.

Senator Ian Macdonald—I am raising a point of order with you, as you have invited me to, Madam Chair.

Senator Chris Evans—No, she told you to sit down and shut up.

Senator Ian Macdonald—Do I have to put up with this sort of abuse?

The TEMPORARY CHAIRMAN—Order, Senator Evans!

Senator Ian Macdonald—Madam Temporary Chairman, aren’t the rules of debate that when a person from this side wants the call, after having had to sit through 20 minutes of boring repetition from that side, you call alternatively? Is that not the rule?

The TEMPORARY CHAIRMAN—Senator Marshall rose before anybody on the government side did, and the rule is that the chair recognises the person who stands first, so there is no point of order. Senator Marshall, please proceed.

Senator Ian Macdonald—Madam Temporary Chair, I rise on a point of order. I happen to know that Senator Santoro did stand immediately Senator Wong finished, because I happened to be talking to him.

The TEMPORARY CHAIRMAN—Minister, there is no point of order. Senator Marshall stood and he was acknowledged. Senator Marshall, please proceed.

Senator Ian Macdonald—Madam Temporary Chair, I rise on a point of order. The minister made an unfair reflection on the chair by claiming that your ruling was unfair and out of order. I ask you to ask him to withdraw that. He was joining the debate from the back of the chamber while distracting Senator Santoro from seeking the call. Nevertheless, his behaviour has been disorderly. The hypocrisy of trying to take a point of order after he had been shouting from the back of the chamber is breathtaking. I suggest you ask him to withdraw the imputation on the chair.

Senator Santoro—Madam Temporary Chair, I rise on a point of order. By way of personal explanation, I was not distracted by Senator Ian Macdonald and I thought that I was rising to my feet simultaneously with the honourable senator opposite. I will abide by your call. I am happy to wait. But I do not want anybody out there listening to think that I was slow in getting to my feet, because I have a few things to say about what has been said before me this morning.

The TEMPORARY CHAIRMAN—There is no point of order. I have recognised Senator Marshall. Please continue, Senator Marshall.

Senator MARSHALL—Senator Murray’s amendments go to the very heart of the policy intention of this bill. Senator Murray and Senator Wong are dead right when they say that the policy outcome of the introduction of this bill will lead to lower wages for Australians across the board. The logic of that is plain for all to see. The government’s rhetoric is that this bill will lead to higher wages and better conditions for Australian workers. If that was a genuine policy intent, why has it lowered the minimum? Why has it lowered the minimum if it does not expect the minimum to be abided by from time to time?

Presently, under the current industrial relations act, the minimum is set by the award conditions. People cannot go below a global no disadvantage test against the award. Those minimums now contain 20 allowable matters. This bill will have the impact of
reducing those to five basic minimum conditions. If it was not the intention of the government to have people working under those five minimum conditions, why has it lowered the test? Why has it lowered the test of the minimum rates of pay and conditions for Australian workers down to what can only be described as the absolute worst pay and conditions for Australian workers, which will be significantly lower than they are now? Of course the plain logic of that is that people will be driven down to those five basic minimums. There will be a race to the bottom, because everything in this bill actually encourages that.

At the moment, under the current act, when an agreement expires it continues in force until it is replaced. One of the elements of this bill will be to enable an employer to unilaterally cancel the agreement once a 90-day period has gone by. What happens to your terms and conditions once your agreement has been terminated after that 90-day period? You fall back to the five basic minimum conditions set by this bill. It is apparent to everyone who has any practical understanding of how industrial relations work in the real world that that clause will drive many people out of the award system and back onto these legislated five minimum conditions.

The government argues that its policy intention for this bill is to create flexibility. It gives us numerous examples of where there are flexible working arrangements already in place, where award conditions have been modified to allow different hours of work and flexibility. The government actually argues against the need for this bill by doing so, because the reality is that there is not a single workplace flexibility that cannot be negotiated under the current act—not a single one. The only thing that you have to do is ensure that the award is not undermined by applying the global no disadvantage test. That provides the minimum. There can be flexibility, but the minimum test is still applied at all times. What does this bill do? It removes the no disadvantage test. Again, the minimum that any agreement must comply with will be the five basic conditions and the worst minimum rate of pay.

So when the government talks about improved flexibility, it does not mean improved flexibility, because every workplace flexibility is available under the current system. What it means is more flexibility without having to compensate the workers for it. That is what it means—more flexibility but it does not have to compensate you for it. It can move you down to the worst wage, the minimum wage that will be set, and the five minimum conditions in this bill without compensating you or getting the flexibility. Senator Wong is absolutely right.

How do we also know that? Because employers have told us so. During the inquiry into this bill employers came to us and said that they believe wages are too high. They seek to flatten wages, they seek to reduce and eliminate penalty rates and they seek to have the flexibility of operating 24/7—24 hours over seven days a week—without restrictions or penalty rates and in industries where they say the wages are already too high. One of the classic examples was the Restaurant and Catering Industry Association, who were very upbeat about it. They were very receptive to the real policy intention of this government because they know it will enable their members to cut the wages and conditions that they have to apply now that are set by the award minimum as it is today.

What we are actually seeing is the introduction of the worst wages and conditions into this country. For the government to say that this will lead to higher wages and conditions beggars belief. It has no understanding
of the practical application of industrial relations in the workplace. When you have employers in competition with each other and you get an employer cutting the wages and cutting the cost of providing the service that their business provides, you automatically invite other employers to do it.

There will be absolutely no generation of increased productivity brought by this because, again, the government has confused profitability with productivity. All the bill will do is provide the incentive for employers to increase their profits by driving down the cost of employing labour. That is a lazy way for businesses to operate, but this bill actually invites them to do it. So, instead of businesses concentrating on innovation, technical investment or proper service, all they will do is to start competing with a reduction of labour costs. And we will see the race to the bottom that we have been warning about ever since—

Senator Abetz—Since 1996.

Senator MARSHALL—Well, ever since Work Choices. The reason you cannot have a race to the bottom now, Minister, under the award system, is because the awards provide that minimum standard. If you were true to your word, Minister, what you would say is: ‘If Work Choices is going to improve wages and conditions, we will not lower the floor; we will keep the minimum test as it is now and let people move up from the minimum. That is what is available now. That is what we should keep in place.’ Why have you lowered the minimum if you do not intend to use that? And, of course, it will not just be the government. What you are doing is providing legislation to enable every employer to take advantage of that. We say, time and time again, that we do not expect every employer to be miserable. We do not expect every employer to drive down wages immediately. But let’s just look at the competitive nature of business. People are in business to make money. If they are able to improve their profit margin and reduce labour costs, particularly when their competitors are doing it, that is exactly what they will have to do. They will be required to do so to remain in business.

The whole bill will be absolutely self-defeating. It will lower wages. It is an absolute disgrace. No wonder Senator Murray, through these amendments, is trying to put fairness back into the way the setting of absolute minimum wages is conducted in this country. And it is no surprise to me that that is why the government does not want the word ‘fairness’. It is happy to bandy it around over its glossy Workchoices leaflet, but when it comes to substance—to actually having any real meaning—it does not want to have a bar of it, and it steers away from it. Senator Murray’s questions really drive the nail into the heart of the policy intention of this government. They are worthy amendments, and the opposition will be supporting them.

The TEMPORARY CHAIRMAN (Senator Crossin)—Senator Santoro, you have moved chair. I assume you are seeking the call.

Senator SANTORO (Queensland) (11.24 am)—I appreciate your call, Madam Temporary Chairman, and I did indicate to senators opposite that I was prepared to be quite patient in waiting for my turn. In fact, I was not going to speak in this committee stage debate, despite the fact that I do have a lot of interest and some experience in this area. In fact, I participated in one of the longest debates in the history of the Queensland parliament when we had to debate my two bills, which totally repealed other bills. I was practically the sole speaker on my side for about 2½ days, from memory. So I do have some
interest and some experience in speaking at a committee stage.

I had actually made the decision, in good spirit, that I would not participate, thereby giving the Labor side of the chamber as much opportunity as possible to put their points and to argue individual clauses—not to indulge in the political point scoring and rhetoric that we have been hearing here since we went into the committee stage; not to mention when we were debating the provisions of this bill at the second reading stage. But I have been motivated to come into the chamber and say a few words, because what I have been hearing, as I listened to the debate on the house’s internal television, is echoes. I have been hearing the echoes of Labor voices of the past, going back as far as 1996 when the government introduced the current legislation that we are amending. The same doomsday predictions were stated then. They have been echoed ever since, despite demonstrable and magnificent performance in the area of employee rights, remuneration and protection by this government under the 1996 workplace relations legislation. It has been amended many times amended since then, with a constant eye to improving the legislation—as this government is wont to do with any legislation and not just workplace relations legislation.

Anybody listening to this debate—whether via the airwaves or in the public gallery or anywhere else—will have heard these basic propositions being put forward, particularly by Labor senators but also by some other senators on the crossbenches. I must admit, in the case of Senator Murray, they have been put in a less hysterical and far more constructive way. Senator Murray, we pay you the compliment, on this side of the chamber, of describing you as such, and we appreciate your considered contributions, even when they disagree very strongly with the position of the government. But, just to be fair in my contribution, I will summarise the argument of senators opposite: the government is about reducing real wages; the government is about hurting the workers; provisions in the bill will be detrimental to the interests of women; and workers are going to be overwhelmingly disadvantaged.

Senator Conroy—I think you’ve got it; an excellent summary, Santo!

Senator SANTORO—Well, I am a fair person. I take the interjection from Senator Conroy. Unlike senators opposite, I actually like to put my comments into context. With respect, Senator Conroy, you and your colleagues rabbit on in a very political and ill-considered manner. We do not. We will actually put your argument—

Senator Conroy—Why don’t you try to spend another $50 million just to bullshit the people?

Senator SANTORO—again, in the context of what I was going to say. And so what we need to do is to have a look at what you started—

Senator Abetz—On a point of order, Madam Temporary Chair: I understand that in this debate there are emotions on both sides, but for the Deputy Leader of the Opposition to come in here and bellow those sorts of words across the chamber does nothing for the dignity and seriousness of this debate and, indeed, does nothing for his own personal reputation either. I ask that the words be withdrawn.

The TEMPORARY CHAIRMAN—So what is your point of order, Minister?

Senator Abetz—The word that he bellowed across the chamber—

Senator Conroy—I withdraw any words that were offensive.

Senator SANTORO—I appreciate the intervention of the minister and the protection
of the chair but, to be honest, I did not even hear the words, and I do not care. You have said so many bad words about so many people on this side that you really have no credibility and the mud just does not stick.

**Senator Conroy interjecting**—

**Senator SANTORO**—I am not hurt, Senator Conroy. I wish to assure you that I did not hear what you said. Thanks for withdrawing those words, but I do not care and I am not hurt. But what I said at the beginning is that all that I have been hearing in this debate is echoes. This is what Stephen Smith said. It is in *Hansard*, 17 October 1995—this is even before the Howard-Costello government was elected and implemented its far-reaching reforms. This is what Stephen Smith had to say:

The Howard model is quite simple. It is all about lower wages; it is about worse conditions; it is about a massive rise in industrial disputation; it is about pushing down or abolishing safety nets and minimum standards. As a worker, you may have lots of doubts about the things that you might lose, but you can be absolutely sure of one thing: John Howard will reduce your living standards.

Those statements were made by Stephen Smith even before the government was elected and our far-reaching—

**Senator Conroy**—A statement of fact!

**Senator SANTORO**—They just do not like the truth, and that is what we are about.

**Senator Sterle**—You’re not wrong—the truth is coming out.

**Senator SANTORO**—That is right. You do not like the truth, and it is your truth. It is the truth that you sought to perpetrate and which was not accepted, particularly at the first election that we won, in 1996. For the sake of the good people in the public gallery and any other Australians who are listening, let us look at the record, and do not forget what Mr Smith said. It is precisely what you have been saying in this debate this morning. I will give it to you again: lower wages, worse conditions, a massive rise in industrial disputation, the abolition of safety nets and minimum standards. That is what you said in 1995; that is what you are saying now. Let us have a look at the record. Again, anybody listening out there—

**Senator Hogg**—Read the legislation, mate!

**Senator SANTORO**—I have read the legislation and I am very comfortable in supporting the legislation—and I will be voting for it.

**Opposition senators**—What a surprise!

**Senator SANTORO**—They are shocked that I am going to vote for it. Let us have a look at the record against those predictions: 1.7 million new jobs have been created since March 1996.

**Senator Chris Evans**—So why do we need to change the laws?

**Senator SANTORO**—I will take that interjection and come back to why we need a change, but let me just finish the points: 1.7 million new jobs have been created since March 1996; 900,000 have been full time and 800,000 have been part time.

**Senator Sterle**—Casualisation—watch it take off!

**Senator SANTORO**—That is in contrast with the record between March 1989 and March 1996, under the Labor rule of Hawke and Keating—remember those two? During that time the membership of unions dropped, and most of you are union officials, so you must have gone home and cried yourself to sleep every time you read the statistics of ever-decreasing union membership. That is what you did. Australian union members ran away from the organisations that you represented in massive numbers because you were
just not delivering for them. What you did as a government during that time was to create 188,000 full-time jobs and 519,000 part-time jobs. There is nothing wrong with part-time jobs, by the way. Give me a full-time job any time, but there is nothing wrong with part-time jobs. You criticise the government for creating—

Senator Sterle—What about casualisation? Try getting a house when you’re a casual.

Senator SANTORO—There is nothing wrong with casualisation. There are a lot of women, a lot of students and a lot of other people who want to balance work and family responsibilities who take on casual jobs and are happy with them.

Senator Sterle interjecting—

The TEMPORARY CHAIRMAN (Senator Brandis)—Senator Sterle, your persistent interjection is disorderly. Be silent.

Senator SANTORO—It is incredible how they just cannot accept the truth. They criticise us for creating casual jobs, yet under Labor Party rule, during their almost 13 years in government, the equation was reversed: far more casual jobs, far more part-time jobs and fewer full-time jobs—and they criticise us for doing the opposite. I just do not understand their logic, and neither does the Australian public. That is the reason why you have lost four elections on the trot and it is the reason why you are going to lose the next one. Until you come to grips with understanding—

Senator Marshall—When will that be?

Senator SANTORO—I do not know when the next election will be. But, whenever it will be, if you are carrying on in this way, your job may be safe, depending on where you are on the ticket, but a few more of your lower house colleagues are going to lose out—and they are going to lose very badly.

I have just outlined the government record on job creation. Let us have a look at wage growth, because one of the major premises of members opposite is that somehow this government is intent on and is absolutely manic about reducing the real wages of workers. Real wages increased by 14.9 per cent since 1996, compared to—listen to this—1.2 per cent. Real wages under the coalition government, under Howard-Costello, increased by 14.9 per cent.

Senator Sterle—You opposed every application for a pay rise.

Senator SANTORO—I will take that interjection, because again it gives me the chance to highlight the hypocrisy of senators opposite. What we did was to support responsible pay increases, which has meant that under the 10 years of coalition government there has been a 14.9 per cent increase in real wages, compared to 1.2 per cent under the Labor Party. That is our record and you do not have any—

Senator George Campbell—That is rubbish!

Senator Sterle interjecting—

The TEMPORARY CHAIRMAN—Order! Senator George Campbell, Senator Sterle, be silent. Senator Santoro has the call.

Senator SANTORO—They do not have any intellectual, practical or even political response: 14.9 per cent versus 1.2 is understood by the least numerate Australian. The least numerate Australian understands the comparison between your record and the one I have just described for us on this side.

Senator George Campbell—I’ll give it to you in shorthand.

Senator SANTORO—I know what they are going to say. I know what Senator Campbell is going to say: it was all at the top
of the range. All of the big bosses, the highly paid people, got the increases and those lower down did not. That is what they are going to say.

Senator Chris Evans—That is what all the academic research says. We heard all this at the Privileges Committee yesterday.

Senator Santoro—Let me quote you some figures and put them on the record.

Senator Ronaldson—Mr Temporary Chairman, on a point of order: that was a totally inappropriate comment from Senator Evans in relation to the matters before the Privileges Committee yesterday. I would have thought he would know because of his seniority that that is a totally inappropriate comment to make across the chamber.

The Temporary Chairman—There is no point of order.

Senator Santoro—I can understand why the Labor Party is trying to obfuscate this argument. This is about the survival of the union movement, because the union movement gets its sustenance through the compulsion that is entrenched in legislation. What we are doing in this particular bill is putting in choice so that Australian—

Senator Sterle—For whom?

Senator Santoro—For whom? For employees and employers. That is what we are doing. It is not the compulsion that you thrive on; it is real choice. Let me get back to the very substantive point that I want to make with regard to wages growth. The argument is that the big bosses and people on high incomes get the money. The ABS data on household income and income distribution—catalogue number 6523.0—

Senator Abetz—You are not quoting facts, are you?

Senator Santoro—I am quoting facts, Minister; you are absolutely right. We on this side of the house sustain our arguments with facts rather than just rhetoric. That data shows that real, equivalised household disposable income for the top 90th percentile increased by 17.7 per cent between 1994-95 and 2003-04 compared—and listen to this—with a real increase of 20 per cent for the bottom or 10th percentile for the same period.

Senator Abetz—What a good result!

Senator Santoro—Minister, you are absolutely right. It is a good result. The study did not come out of my office. It did not come out of Senator Ronaldson’s office, Senator Concetta Fierravanti-Wells’ office, Senator McGauran’s office, Senator Ferguson’s office or indeed the minister’s office; it is a study by the ABS which debunks the notion that we are all about big wage increases for the highly paid and not for the lowly paid. We in this party, as the minister said before in very good debate, are for all of our mates.

Opposition senators interjecting—

Senator Santoro—Our mates include Australian workers—the Australian workers that you abandoned by putting your head in the sand and wanting to take us back to an industrial relations system that is 100 years old. Because I have so much more to say, I am going to come back to another clause or two at the earliest possible opportunity.

Senator Chris Evans (Western Australia—Leader of the Opposition in the Senate) (11.40 am)—I have great pleasure in following Senator Santoro in the debate, because he started by saying that he heard echoes of the past, and Senator Abetz interjected and said the senator has a great record. I would like to focus on his record; I would like to focus on echoes. Remind me: who was the minister for industrial relations in the Queensland Liberal government when they lost? Who was that? Was it Minister Santoro? I think it might have been. Who
lost his seat at the following election because of his record on industrial relations? I think it was a member called Santoro. I do not know if this is the same chap, but I understand that they had to dump him into the Senate because he was a complete failure at state politics. The Queensland people made a judgment. What did they make a judgment on? They made a judgment on his performance as industrial relations minister and they threw him out. He had a safe seat, and he lost it.

Senator Abetz—It was never safe.

Senator CHRIS EVANS—I do not know what 60 per cent is to you, but that looks pretty safe to me. If 60 per cent is marginal, you are in a lot of trouble at the next election because, as I understand it, 60 per cent was his original vote and he managed to lose his seat over two elections. Why? Because he was identified with the Liberal Party’s extreme industrial relations agenda. To be fair to the senator, he is not alone. In Western Australia, the same thing happened. Mr Graham Kierath introduced these reforms in almost exactly the same form as those we are debating today. He had a relatively safe seat—not as safe as the one that Senator Santoro lost but relatively safe. Whatever happened to him? He was thrown out by the Western Australian people. In the two states where the Liberals tried this on, both their employment ministers became unemployed very quickly afterwards. Senator Santoro managed to organise a factional arrangement that got him into the Senate. Unfortunately, Mr Kierath was not as well placed inside the WA Liberal Party and is now pursuing private opportunities. The point is, if you want an example of what this IR debate reflects, Senator Santoro is a classic, because he was—

Senator Ferguson—Mr Temporary Chairman, on a point of order: on seven or eight occasions Senator Evans has failed to pronounce Senator Santoro’s name correctly. If he is going to talk about people who are failures, after four months I think Senator Evans ought to be able to at least call Senator Santoro by his proper name.

The TEMPORARY CHAIRMAN (Senator Brandis)—I am sure Senator Evans will strive to pronounce Senator Santoro’s name correctly and I am sure Senator Evans will also strive to direct himself to the provisions under discussion.

Senator CHRIS EVANS—I will attempt to get Senator Santoro’s name correct. One of his colleagues in the chamber has a name I completely struggle with. Santoro is the easy one. Thank you for the correction, Senator Ferguson, but I cannot pretend I will get it right all the time. I do want to concentrate on the fact that the events I described are a reflection of what happened in the Australian community. They worked out in Queensland and in Western Australia that the Liberal governments in those states were not governing for them; they were governing from a commitment to some industry and business groups. They were delivering on an ideological right-wing agenda and the public worked it out. The public are pretty good at seeing through politicians. We may all think that somehow we get away with it, but they work it out. They worked it out in Queensland, they worked it out in Western Australia and they will work it out here. They know this is not legislation designed to be good for them.

The classic in this debate—and the clauses dealing with this are before us now—is the Fair Pay Commission. They have abolished the Industrial Relations Commission, they have abolished the minimum-wage-setting mechanisms that have served this country well for 100 years, and they have created the ‘Fair Pay Commission.’ Goebbels would be very proud of that. Talk about misuse of lan-
guage! The Fair Pay Commission will remove many of the protections that are available to Australian workers. It will remove the social objectives. We fought for years to get a 40-hour working week in this country. Workers campaigned for it and argued for it on the basis that an eight-hour day over five days would allow people to balance work, family and rest. It was a long campaign and Australia was one of the countries that adopted a 40-hour week as a reasonable compromise between the demands of work and the demands for a family and social life. But the social objectives that have governed our industrial relations system for many years have been removed.

The Fair Pay Commission is only interested in economic objectives. Workers are seen as units of production. They are not people; they are units of production. So all the protections, all the social objectives that have been in our IR legislation for many years have been abolished. Why have they been abolished? They have been abolished because the government does not want minimum protections. The best it could do is some very half-baked protections on five conditions—five conditions alone. From what we have seen in this debate and in the analysis of the bill, those protections are very weak indeed.

It is very hard to make any sense of the hours clause propositions now. We can go through all the amendments the government have got. I am not sure where it will leave us, when they pass them. I do not think they know either. But what we do know is that the protections that have been with us since 1948 are going to be abolished. In 1948 we had the acceptance of the 40-hour week throughout Australia. The protections that we gained in 1948 are abolished by this legislation. People say John Howard takes us back to the 1950s—the white picket fence, his view of women cooking at home and not being in the work force et cetera. That is grossly unfair. He is taking us back to the 1940s, not the 1950s. He is taking us back to the time when you were not guaranteed a 40-hour week, let alone a 38-hour week. Those protections are gone.

When you get to the core of it, when you ask them, ‘Why are you reducing the minimums?’ they do not want to debate that, because there is only one answer. Think about it: why would you abolish the minimums? So as to allow people to go below them. What are minimums? They are the bottom point. They are the lowest point at which you can proceed. You can negotiate above minimums. You can seek extra pay and better conditions, but the minimums are a standard whereby Australian society says, ‘We think every worker is entitled to this set of conditions as a minimum,’ including provisions for pay, hours and protections. This government has said: ‘No, we don’t support that. We will pay lip-service to a set of five minimums, but effectively they are abolished. We don’t want the minimum wage setting that we have seen in this country for more than 100 years, because that stifles innovation.’ In other words, they want to be able to allow people to go below the minimums, otherwise why would they do it? It is not some theoretical thing. If you reduce the minimums, if you abolish the minimum wage, what effect does that have? It allows people to operate on less. That is the whole point, and that is the whole point of this legislation. That is why people like Senator Joyce have done nothing to protect Australians, because they have not protected those minimums.

It was interesting the other day: even when some minor amendments were suggested by the government, a couple of industry bodies came out and said: ‘We don’t want all that complexity. We don’t want any suggestion that people might be guaranteed that they get paid fortnightly. We don’t want any
guarantee that they might be entitled to have their hours protected. We want to be able to be much more flexible. They might work 60 hours one week and 10 the next. We don’t necessarily want to have to pay them the basic 38-hour week pay a fortnight.’ They do not want that sort of complexity. There is that attitude from some employers that they do not want minimums, and this government is delivering.

I have got to be fair to the government: they are delivering. Certain employer groups in this country had an agenda—not an agenda taken to the election, not an agenda discussed with the Australian people—and the government are delivering. They are delivering for their mates. And I am sure they will be very grateful and I am sure that donations to the Liberal Party will be flooding in. And I am sure that under Senator Abetz’s regime they will not have to be declared either. It will be all very nice. It will be back to the good old days when you could do what you liked, donate to the Liberal Party and everything would be okay. Well, it is not okay.

The government spent $55 million of taxpayers’ money trying to convince the Australian public that they were right, that this was good for them. But the Australian public have worked it out and have asked: ‘Why would the government spend $55 million of our money trying to sell this to us? If it is so obviously correct, if it is so clearly beneficial, why would they need to spend $55 million of our money?’ Because they cannot win the argument. They needed the old Goebbels propaganda campaign again. They needed words like ‘Fair Pay Commission’ and they needed to spend taxpayers’ money to try and convince people it is good for them. Well, it is not good for them. Going back to the industrial conditions of the mid-1940s is not good for them. Taking us back to those sorts of industrial conditions is not good for us. We have made social progress in this country which is based on a fair go, based on Australian values, and there is nothing Australian about the values that underpin this legislation.

I do not want to take too long, but I do want to make the point that the Fair Pay Commission does not deliver the protections we have now—the protections for the low paid, for women and for young people. My experience in Western Australia of this very system in the state jurisdiction was that the people who got exploited were the young, the Indigenous, the migrants and the women. We have seen the research and the statistics about what happened. More than 50 per cent of workers in the retail and hospitality industries ended up on less than the award rate. The award rate used to be the minimum. The government freed that up, as they say—they like that language—and 56 per cent of the people in those industries ended up on less than the award rate. That is the whole point: you allow the wages and conditions to fall. They will not fall for those in higher skills areas, they will not fall for those in higher demand areas, but they will fall for the most vulnerable.

That is not the Australia we want. That is not the Australia that the Australian people want. This government has to think very carefully about going down this American path where people work for low wages, where you have people parking cars for virtually nothing, where you have people working for tips. If you go into a restaurant in America and talk to the waitresses they might be on $3 an hour. How do they make their living? By tips. Do we want to have a community where people working in Australia have to rely on tips? That is not the sort of Australia I want. We want people to be guaranteed a fair day’s pay for a fair day’s work. That is what we thought we got in 1948. But, no, John Howard wants to take us back to
before 1948, to a point where you were not guaranteed a 40-hour week, to a point where you were not guaranteed a fair day’s pay for a fair day’s work. We do not want to go back there.

I do not go in for political predictions terribly much because this is a very volatile game. But I have seen what happened in Queensland and I have seen what happened in Western Australia, and the Australian public are pretty savvy. They work it out. They have worked it out that this bill is not good for them; this is not in their interests. I think 2 December 2005, when this bill passes, will be the beginning of the end of the Howard-Costello government because they have overreached. They have gone to ideology. John Howard is a smart politician, but this is his ideological obsession. This is not governing for middle Australia. This is not governing for ordinary Australians. This is about an ideological obsession being fulfilled. He has overreached. The Liberal Party have overstepped the mark and there are an awful lot of marginal seat members in the House of Representatives representing the Liberal-National Party who will pay the price. Even Mr Howard’s seat is down to a fairly low margin these days, I notice. But they will pay the price because the Australian public will reject this legislation. Those people who so keenly joined the party backbench committee who wanted to help prosecute the government’s case will learn to their great cost that the Australian people do not accept this legislation. They do not accept the approach that it represents.

As I said, I think 2 December 2005 will mark the beginning of the end of this government. People do not forget. They realise that this legislation is not in their interests. They will seek to redress the balance. They know that the coalition has abused its power in the Senate, that the government is introducing legislation that is not for them, that it is for the government’s mates, and that, fundamentally, the values that underpin it are not Australian values. When you do that, you pay the price. I think they will pay the price. People who pretend that abolishing the protections in the current system is anything other than allowing us to see conditions fall are completely naive. The only reason you abolish minimums, the only reason you abolish that floor in the system, is to allow wages and conditions to fall below it. Otherwise, why would you do it? I say to the government: why are you doing this? Why would you do this unless you are entertaining the possibility that those minimums will not be protected in the future?

I urge coalition senators to rethink their position, to try and do something constructive to ameliorate the worst excesses of this legislation. Sure, we need flexibility. Sure, we need productivity. But this legislation does not take us there. This legislation takes us down the low-wage, low-skill path. It divides Australians and it ensures that the groups without bargaining power in our society are exploited because they do not have the power necessary to protect their conditions. They have been protected by legislation and industrial commissions for the last 100 years. This bill removes those protections.

Senator ABETZ (Tasmania—Special Minister of State) (11.56 am)—The way that the opposition conduct this committee stage of the bill is up to them. I think most would accept that if there has been a 15-minute homily of empty rhetoric delivered, then I will rise to the challenge on behalf of the government. If the opposition want to use all their time on empty rhetoric, so be it.
We had Senator Chris Evans trying to tell us about Senator Santoro’s political career. Just remind me: in recent times, who was sacked from the Senate shadow ministry? It wasn’t Senator Chris Evans, was it? Then, because of the dearth of talent on the other side, after the election, they scratched around and said: ‘We need a Leader of the Opposition in the Senate. Who can it be? Let’s go for that sacked opposition spokesman that even Mr Latham found too unpalatable to comprehend.’ So they dragged around and placed him in the seat. No wonder so many people have made the adverse comments that they have on the Australian Labor Party and its current performance.

Senator Chris Evans talks about removing the term ‘fair’ from the legislation but, of course, he fails to tell us that the word ‘harmonious’ has been inserted in the principal objects. As I said last night, how do you achieve harmony unless there is fairness to both sides? You will not receive harmony in the workplace if one side believes it is not being treated fairly. So we have this dishonest and pathetic debate from those opposite saying, ‘See, they’ve removed the word ‘fairness’; therefore they do not want fairness.’ Does that mean that because ‘harmonious’ was not previously in the bill Labor never wanted a harmonious workplace? Of course not. So whether we say we want fair workplaces or harmonious workplaces, give us a break. Let’s get real. Let’s get to the meat and the substance of this legislation and not muck around with pathetic semantics and saying, ‘It’s not fair because the word is not in there.’ I think the word ‘harmonious’ more than covers the field.

In relation to legislation and people having mandates, Senator Chris Evans and his Labor Party promised the people l-a-w law tax cuts and, immediately upon their re-election, repealed the l-a-w law tax cuts. So, clothed with all that duplicity, they come into this place asserting moral superiority. Give me a break. You can fool the Australian people some of the time but, hopefully, not all of the time with your empty rhetoric and denial of your own history.

The anti-American sentiment seeping—it is not seeping; it is gushing—out of the opposition is such that they got rid of Latham as their leader—or, I suppose, the Australian people did—but the Lathamesque anti-Americanism is still there. It still goes around in their veins and their arteries. It is part of them. Of course, if Senator Chris Evans keeps this up, do you know what will happen? Mr Beazley will say: ‘Oopsie, we’ve gone too far. Where is the nearest American flag? Let’s hold a press conference in front of the American flag to prove that we are in fact friends of America, although we have been bagging America for the last six months flat out,’ and will try to recover the ground, as his party did so pathetically before the last election.

Having said that, as I have said time and again, we are providing an Australian solution to Australia’s unique situation for the benefit of individual Australians. Senator Chris Evans falsely asserted in his speech that the Australian Industrial Relations Commission was to be abolished. It is not to be abolished. You can repeat your misinformation as often as you like, but mere repetition does not obviate the need for facts to support your false assertions. Repeat it as much as you like, but it does not make it a fact. If you say it 100 times, it is false 100 times.

We are also asked why we are getting rid of the standards and putting the standards right down. Excuse me, but this is the first time ever that there is legislation before the Australian parliament to guarantee workers 10 days sick leave or personal leave. It is the first time ever that that is guaranteed by leg-
islation. I suppose the big end of town knocked on our door and said to Minister Andrews: ‘Make sure you give the workers 10 days personal leave. We aren’t doing it in the manufacturing sector at the moment but, yes, please do that.’ They also undoubtedly said to us, ‘Make sure that the workers can’t trade away those 10 days, as they currently can.’

We are protecting workers by legislation to ensure that 10 days personal leave will be a minimum standard. For some, it will be an increased standard, and it cannot be traded away. Do you think the big end of town told us to do that? Of course it did not. It is there because we have a rapport with the Australian people and the Australian work force—people like those who met at the Albert Hall in the seat of Bass just before the election. We have empathy with those sorts of people and we understand their needs and their aspirations. That it also why, for the first time ever, we have guaranteed in this legislation that workers will have their annual leave protected. At the moment, they can trade away the lot of it. We are saying that you can only trade away two weeks.

We are protecting workers’ conditions like they have never been protected before. Let me remind those on the other side, who are so proud of their trade union credentials—as they should be and as I want them to be—that they represent 17 per cent of the Australian work force. Chances are that we represent the other 83 per cent of the Australian work force, and we are taking our direction and suggestions from the average Australian worker, not from those who have unions foisted upon them or, indeed, those who want union involvement. But we are even listening to that other 17 per cent as well, to assist us in informing the way we should be developing and delivering this legislation for the benefit of the Australian people. The opposition’s bland assertion that this legislation will represent a diminution of workers’ rights is simply false.

I return to Senator Murray’s amendment, which I understand is before the chamber. I encourage honourable senators to concentrate on the specific clauses. Let us deal with the questions and answers in that regard. Senator Murray, in what I hope was a slip of the tongue, suggested that the Fair Pay Commission would not be fair, or words to that effect. I think that is a bit of a slight on those who will be appointed. I do not think that those who are appointed to the Australian Fair Pay Commission will get up of a morning, make a cocktail of lemons and razor blades and swallow that before they go in to the commission and ask, ‘How can we do over the workers of this country?’ They will not be doing that. Of course they will not. They will take their jobs seriously and will do the very best for the Australian people: the employed and—specifically mentioned for the first time ever—the unemployed.

Those champions opposite, who have lost the support of the working people in the trade union movement and the support of workers at elections, sat around the cabinet table with the ACTU under that great accord—remember the accord?—which delivered us one million Australians unemployed. What a fantastic record! Let’s re-elect the Labor government on the strength of that! They can deliver one million Australians unemployed. The Howard government have only 500,000 unemployed. What a great failure we must be for having halved the unemployment rate in this country, for having created, as Senator Santoro told us, 1.7 million jobs!

We have seen the lowest income earners share in the increased wealth of this country at a greater rate than the top end of income earners. That is why people in the seat of Braddon in Tasmania, which is one of the
lowest income electorates in Australia, elected a Liberal member of parliament in 2004. I wonder why. It was because they know what we deliver. They know that we deliver the $600 family payment which, of course, those on the other side still say is not real money. When we go doorknocking in Burnie and places like that, the mums and dads tell us: ‘Do you know what? We could actually withdraw that $600 from the bank. We could take it to a local shop and spend it. We think it is real money.’ So I say to the people of Australia: these are the people who brought you one million unemployed, the same people who told you that the $600 was not real. Ask yourselves: do you think they are being honest on this occasion when they seek to describe to you our Work Choices legislation?

As Senator Santoro so eloquently put it, those on the opposite side asserted 10 years ago, before we were even in government, that the Howard agenda would be to cut wages, it would be a race to the bottom—all the nasty things that you could think of, no matter what it would be—the number of broken windows would increase if a Howard government were elected and car accidents would increase. No matter what the mayhem, it would increase if a Howard government were elected. The people of Australia know that they now have more job opportunities than ever before. We have seen the lowest rate of industrial disputation ever in this country and a 14.9 per cent increase in real wages. The workers know the facts. The pay packets speak a lot louder than the propaganda from those on the other side.

Also, Senator Marshall in this contribution sought to suggest that, if an award were to end, you would then be thrown onto the five minima. I corrected that last night; I correct him again this afternoon. I really do not know how often you have to say some of these things, but of course the Labor Party have their mantra going. They have been given their lines and, therefore, they will repeat them ad nauseam, irrespective of the facts.

For the benefit of people such as Senators Evans and Marshall, allow me to read to you what I think is a very apposite quote from the Weekend Australian of 28 May 2005. Let us see if those opposite can recognise the behaviour. This is what the very insightful editorial told us:

Drama merchants in the Labor Party and the unions are warning of horrors to come following changes to the industrial relations laws. They tell us bosses will sack workers at will and that wages and conditions will be cut. It is all nonsense—a fantasy from union apologists frightened of change. Unions prospered in the old Australia when membership was compulsory—and, oh how it changed when it became voluntary, right down to 17 per cent—and wage rates were decided by quasi-courts that established artificial comparisons between people doing completely different jobs at opposite ends of the country. It was a system that suited labour lawyers, union officials and employer representatives who liked a quiet life. But for other Australians it was a form of feudalism, paying us according to the lowest common denominator, no matter how hard we worked. ... The old industrial relations system assumed class war was the norm and was never relevant to the reality of our egalitarian, acquisitive culture, where workers have always assumed the right to build a better life.

That last phrase, build a better life is what—

(Time expired)

Senator GEORGE CAMPBELL (New South Wales) (12.11 pm)—I want to address the amendments that have been proposed by Senator Murray, or to at least try and get back to that discussion, because a couple of very important principles have been raised in what Senator Murray has put before this committee. First of all, I want to correct the record with respect to some of the figures
that Senator Santoro put on the record this morning.

Senator Abetz—You’re not going to apologise?

Senator GEORGE CAMPBELL—You will note, Minister, that I listened with quiet patience to your 10 minutes and I would respect you doing the same for me.

Senator Abetz—I know it seemed short but it was 15 minutes.

Senator GEORGE CAMPBELL—I am quite happy to take your interjections, if that is what you want, but I listened to you in silence. Three points have to be made. Between July 1992 and March 1996, the Labor government in this country created jobs growth of 2.34 per cent per annum—fact. Information provided by the Parliamentary Library. During the coalition’s term, from 1996 annual jobs growth has averaged 1.94 per cent—fact. Information provided by the Parliamentary Library. In the period 1992 to 1996, 68 per cent were full-time jobs—fact. Information provided by the Parliamentary Library. Full-time jobs growth under the coalition government was 51 per cent—fact. Information provided by the Parliamentary Library. And over the 13 years of Labor government, from 1993 to 1996, annual jobs growth was 2.23 per cent—fact. Information provided by the Parliamentary Library. So I would suggest that you check your facts, Senator Santoro, because I do not know where you got your figures from.

Senator Santoro—They were from the Australian Bureau of Statistics.

Senator GEORGE CAMPBELL—I would suggest you check them with the Parliamentary Library, because you have the figures from the wrong end.

Senator Santoro—We’ll do that and I’ll come back.

Senator GEORGE CAMPBELL—Let us look at the wages issue.

Senator Santoro—Could you table that document?

The TEMPORARY CHAIRMAN (Senator Brandis)—Order! Senator Santoro, let Senator George Campbell be heard in silence.

Senator GEORGE CAMPBELL—It is not a document that can be tabled. Let us look at wages. The reality is that, under the coalition government, wages for the top percentile of wage earners in this country increased by 13.8 per cent over the period of the Howard government. Wages for the bottom two percentiles grew by 1.2 per cent. That is despite the fact that there were a number of national wage cases which helped boost the wages income of the groups in the lowest two percentiles. Let us look at the issue of national wage cases and then I will come back to the issue of the Fair Pay Commission.

From 1997 to 2005, the Australian Industrial Relations Commission awarded increases of the minimum weekly wage to $50 a week, or $2,600 a year, higher than it would have been if the commission had adopted the government’s submissions. In fact, the commission awarded wage increases at the bottom level substantially higher than the government was seeking. They also awarded wage increases that were something like $5,000 a year higher than what they would have achieved if the commission had adopted the submissions by ACCI, the Australian Chamber of Commerce and Industry, which argued for zero wage increases in five of the nine cases between 1997 and 2005.

That brings me back to the point Senator Murray has been making about the Fair Pay Commission. If the government argues that we need a Fair Pay Commission, then the
other side of that argument must be that the government believes that the Industrial Relations Commission is unfair in its judgment of wages. How does it believe it is unfair? It must believe that the commission is awarding wage increases that are too high. It would not see the commission as being unfair if it thought the wage increases being awarded were too low. The logic of the argument is that it must see those wage increases as too high; therefore the commission is unfair.

The Senate Employment, Workplace Relations and Education Legislation Committee heard the argument put by ACCI. I think it was one of the more honest arguments I heard. They said they did not like the Industrial Relations Commission because it did not pay enough attention to the economic arguments. It did not give enough weight to the economic arguments in making its judgments. In fact, ACCI were arguing—and I think it was Senator Murray who put this point to them—that the commission was not giving enough weight to the economic arguments of ACCI. Therefore, they were not getting the results from the commission that they otherwise could have and should have expected.

Why is there support for the Fair Pay Commission? Quite frankly, ACCI support the Fair Pay Commission because they believe that they will get a slowing of wages growth as a result of the introduction of the Fair Pay Commission. They believe it will not award wage increases at the levels they have been awarded by the Industrial Relations Commission and, therefore, the outcome will be better for them. This view is also shared by employers. Two employer groups appeared before the committee. One was COSBOA and in response to some question about the Fair Pay Commission and how it would operate its representative said to us:

What about a highly-skilled mother who is willing to work at a lower rate in return for the ability to pick up her children after school? If a small business can provide that flexibility, retain her skills and still travel along nicely in this economy, I think we would be very pleased.

In other words: if we can get the labour at a lower price for being a little bit flexible—for allowing women to go and pick up their kids from school—that is a good result for us. But it is a clear indication that COSBOA expected that they would get a better wage outcome from the Fair Pay Commission than they would get from the Australian Conciliation and Arbitration Commission. Mr Hart, who appeared for the Restaurant and Catering Association, told us:

For our industry, as opposed to other industries, we are looking at less growth overall in wages. That does not mean that the decision, though, will be a lesser overall decision—

I am not sure what it does mean—

What we are hoping for is a package that is more palatable to our industry and more equitable across other industries.

He went on to say:

The total amount expended on wages across the industry is too high.

If that is not an argument that suggests that they expect to get a slowing of growth of wages out of the Fair Pay Commission, then I do not know what it is. That organisation is from an industry that is subsidised by the taxpayer. That industry has substantial subsidies from the taxpayer, because a very significant number of people who work in that industry work for cash in hand. They do not have awards, they do not have AWAs, they do not have individual contracts—they have cash in hand. That is how the industry functions. To a very significant extent the restaurant and catering industry in Sydney functions based on cash-in-hand payments. But both those employer groups were quite clear about their expectations of the Fair Pay Commission. I come back to my first salient point, and that is—
Senator Abetz—There wasn’t one.

Senator GEORGE CAMPBELL—Minister, for your edification again, that point is: if you want to put in place a Fair Pay Commission then why are you arguing that the Industrial Relations Commission is unfair—that its treatment of wages has not been fair, proper and impartial? After all, the president of the commission is your appointment. Most of the people on the bench are your appointments. The place is very heavily stacked with people that have been appointed by your government. What is the difference? Explain to us the subtle difference between the two commissions. Why do you regard one as being fair and one as not?

Senator Abetz—We are not saying that.

Senator GEORGE CAMPBELL—If you are not saying that, what is the point of replacing it? It has made numerous decisions over the years on wage rates for employees in this country. I have never seen in my time of practice in industrial relations decisions that have not been fair and balanced.

Senator Sherry—So why change it?

Senator GEORGE CAMPBELL—They have not always been favourable to the unions nor have they always been favourable to the employers. At the end of the day, they have always been decisions that have been fair and balanced in terms of the needs of the work force. If there is nothing wrong with it then, as Senator Sherry asks, why change it? And, if you are going to change it, what are the reasons for changing it? There has to be a justification, a reason for changing it. You know what that reason is, Senator Abetz—it is setting up a structure that you will stack, that will ensure that you get outcomes that will ultimately slow wages growth in this country and that will allow the provisions of wages and living standards to fall over a period of time.

In that respect, I support the amendments that have been put forward by Senator Murray. It is very appropriate to pick up those elements of the Industrial Relations Commission—and I think that is what the amendments that we are talking about— that have been there for a significant period of time and have set the framework for the operation of the commission in the way it has made its judgments about wages in this country, and to ensure that at least those guidelines are used to underpin the operations of the Fair Pay Commission—or the low pay commission, as it is more commonly referred to in the circles in which I travel.

Senator CHAPMAN (South Australia)—(12.25 pm)—Again we have heard from Senator Campbell the consistent reaction to this legislation that we have heard from the Labor Party—

Senator Bob Brown—Mr Temporary Chairman, I rise on a point of order. Senator Siewert has called a point of order but has not been recognised by the chair.

The TEMPORARY CHAIRMAN (Senator Brandis)—I am sorry, Senator Siewert, I did not see you.

Senator Siewert—Thank you. I feel like a yo-yo I have been bobbing up and down so much. The Australian Greens have similar amendments to the current Democrats amendments. I thought it would be worthwhile to address those now rather than restarting them later.

The TEMPORARY CHAIRMAN—What is your point of order, Senator Siewert?

Senator Siewert—My point of order is that I have been bobbing up and down for the last hour and 20 minutes. In point of fairness I would have thought it would be fair to call somebody from the crossbench at this time.

The TEMPORARY CHAIRMAN—I did not see you. The practice generally is to
call speakers from alternative sides of the chamber. I will suggest to the Temporary Chairman who replaces me at 12.30 pm that when Senator Chapman is finished you then be recognised.

Senator Wong—Mr Temporary Chairman, I have been observing that Senator Siewert has been trying to speak for some time. I understand the Senator Chapman has the call. From our side I can indicate that we would propose that Senator Siewert has the call next.

The TEMPORARY CHAIRMAN—
That is what I just said.

Senator CHAPMAN—As I was saying before that interruption, the comments that we have just heard from Senator Campbell reflect the reaction from the Labor Party to this legislation that has been consistent since its announcement and introduction—that is, a response of hysteria, negative propaganda and misinformation. That in turn exactly mirrors the response which they gave to the reforms introduced by the Howard government back in 1996—hysteria, false information, misinformation and negative propaganda. That is what we saw during the whole period of the first round of industrial or workplace relations reforms initiated by the Howard government. It was debated in this chamber in October 1996, virtually nine years ago.

Those claims have been shown over the past nine years to be demonstrably false. What were the claims? Workers would be exploited and wages would fall—exactly the sort of nonsense we have just heard repeated by Senator Campbell this afternoon in this debate. In the remarks I made during the debate on that legislation on 8 October 1996, I referred to a comment that had been made by Mr McMullan on 30 May 1996. He said the legislation—the 1996 legislation—would ‘mark the end of a cooperative era of industrial relations’. Again, that is the sort of thing they are saying now. In fact what it did was open the door to a much more cooperative era of industrial relations, instead of industrial relations being determined in a centralised system by people who knew nothing of what was happening at the grassroots, the workplace, and the individual enterprise and workplace level. Over the last nine years we have seen conditions and work arrangements determined at the individual enterprise level, to the enormous benefit of those businesses and to the enormous benefit of their employees.

Senator Forshaw—Mr Temporary Chairman, I rise on a point of order. I believe that a moment ago Senator Chapman may have made an inappropriate remark regarding judicial officers. He said that previous decisions have been made or determined by people who in his view knew nothing. I believe that is an offensive remark against persons who have been appointed to the Australian Industrial Relations Commission and to the Federal Court, which hears appeals from the commission. Those officers were appointed by this very government, and include the President of the Australian Industrial Relations Commission, the Hon. Justice Geoff Giudice. I do not believe it is appropriate for a senator to make a statement that those judicial officers know nothing.

The TEMPORARY CHAIRMAN—
Criticism of judicial officers is not the same as reflecting on judicial officers. There is no point of order.

Senator CHAPMAN—I welcome your decision on that, Mr Temporary Chairman, because I did not mention judicial officers. But, if you want to talk about the Australian Industrial Relations Commission, I did not say they knew nothing—

Senator Abetz interjecting—
The TEMPORARY CHAIRMAN—Senator Abetz, order! Senator Abetz, just be silent.

Senator CHAPMAN—I said they knew nothing about the circumstances of individual local enterprises, and of course that was demonstrated time and time again by decisions made by that body. The point I want to make is that, contrary to all of the fearmongering we saw from the Labor Party in 1996, over the last nine years we have seen real wages increase by 14.9 per cent, compared with a modest 1.2 per cent over the whole 13 years of the Labor government. We have seen industrial disputes consistently remain at their lowest level since records were first kept way back in 1913. We have seen 1.7 million new jobs created, and over the last year or so we have seen unemployment hover around five per cent to 5.1 per cent, consistently at a 30-year low.

Those have been the consequences of the reforms of 1996. They have been beneficial to businesses, which have grown and expanded, and beneficial to employees, whose wages have increased significantly in real terms. Importantly, they have also been beneficial to the unemployed, because with the creation of 1.7 million new jobs they have been able to gain employment. That, as I said, contrasts with what happened under the Labor Party.

Let me point out that Senator George Campbell misused statistics when he claimed that the salaries and wages, the incomes, of wealthier people had increased significantly more than those of the less well off. That is based on a study which is riddled with errors. It is an ACIRRT report, prepared for Unions New South Wales, and I think it is important to put on the record that there are a number of data input errors and methodological errors in that ACIRRT material. For example, ACIRRT asserted that real average weekly earnings for persons in the top 10 per cent of income earners grew by 13.8 per cent between 1998 and 2004, when in fact they grew by 5.5 per cent.

Senator Abetz—So just a slight error.

Senator CHAPMAN—I would say it is a substantial error, Minister. It was a data input error and a methodological error, and that error has formed the core of the claim by Unions New South Wales that higher income earners have benefited more than lower income owners under the current government and as a result of the much-needed reforms that were introduced in 1996.

When we come to debate the Fair Pay Commission and interfering with the way in which wages and conditions are going to be determined, need I remind this chamber that back in 1988 the then Labor government sacked the whole Australian Industrial Relations Commission because they wanted to get rid of one particular commissioner. I think it was Justice Staples they wanted to get rid of. They sacked the whole commission and then reappointed them! So we are seeing hypocrisy from the Labor Party on this issue.

The fact is that the reforms that are part of this legislation are much needed, as were the 1996 reforms. But they are evolutionary reforms; they are not revolutionary. They are relatively modest reforms but, nevertheless, they are important reforms. I would say they are reforms that are about a quarter of century too late. They should have been introduced in 1980. I recall advocating very strongly in the other place and also in some seminars back in 1980 that a less regulated, decentralised workplace relations system was what Australia needed. I think that I can claim, with some pride, to have been the first Liberal parliamentarian to have done so, even before our present Prime Minister saw the light on this issue.
This is an issue that has been around for some 25 years, and at long last it is being brought to fruition and the necessary reforms are being made to free up our workplace relations system and provide a more productive system that will be of benefit to both businesses and employees. It is with some regret that I recall that the Fraser government failed to embrace those necessary reforms back in 1980, although I must give them some credit, as they did make some modest changes to our workplace relations system at that time to bring about some improvements.

The Labor government that then came into office failed dismally in regard to the need to reform our workplace relations system. Certainly, they introduced some reforms to the financial markets and to our industry, trade and protection policies, but they singularly failed to introduce reform of industrial relations. On the contrary, the changes that they made and sought to make to our industrial relations system during their term of office were based very largely on two inquiries—the Hancock report, called the Report of the committee of review into Australian industrial relations law and systems, and another union based document, called Australia reconstructed. They were the basis of Labor’s reforms to our industrial relations system, leading to responses that entrenched and enhanced union power, rather than freeing up the system as was essential.

Senator Abetz—Australia deconstructed.

Senator CHAPMAN—Yes, it certainly had that effect. I recall that at the time Professor Richard Bandy, who is certainly no barracker for the Liberal Party, described Labor’s reforms based on the Hancock report as ‘the last hurrah of the past, rather than a blueprint for the future’. Labor introduced reforms that were very much based on history, on 19th century, out-of-date worker-employer confrontation, rather than reforms that would foster the cooperation which was going to be so important for Australia’s future as we moved into the 21st century.

It is to the enormous credit of the Howard government that they have initiated reforms, firstly in 1996 to the extent that they were able to do so. Lacking a majority in the Senate, they made some modest reforms that have certainly had enormous benefit for our workplace relations structures and systems. As I said earlier, they have been to the great benefit of employees. Now, as a result of the wisdom of the Australian voters last year when they at last gave the government a majority in the Senate, we are able to press on with further reforms that will make an enormous contribution to the future potential for wealth creation in this country—to be shared, again, by both businesses and employees. It is important that this legislation is passed unchanged by the amendments that have been put up by the Democrats and the opposition.

With regard to Labor’s scaremongering on this issue, I want to refer to a very good article that I saw earlier this week in the Financial Review. It was written by Mark Christensen, an economic consultant who has been an adviser to the Queensland Treasury and the Productivity Commission—so he is someone of good repute. He said:

Despite the propaganda, labour market reform is entirely consistent with our cultural ideal of a fair go.

This is Labor’s argument: workers will not get a fair go under this new system. As Mr Christensen says, it is ‘entirely consistent’ with the Australian ideal of a fair go. He goes on to say:

The most endearing aspect of Australian culture is a willingness to assume the best of others. Efforts to discredit Work Choices—this legislation—
represent a faithless act that only demonstrates that those involved are deficient in the very attribute they claim to be defending.

Which view actually presumes a fair go: trusting that employers and workers can sort things out, or a fear-infested willingness to draw a line between us and them?

That is what Labor want to continue to propagate—this ‘us and them’ mentality—while completely failing to recognise that in a 21st-century economy employers, businessmen and employees have a strong common interest in making their enterprise work effectively, and this legislation will enable that effective working together to occur. You can have all the regulations and rules in the book but unless you recognise the cooperative nature of enterprises today then you are not going to achieve a strong economic position and strong growth for firms, jobs and wages. As Mr Christensen also says:

... economic security comes from accepting that there is no fail-safe method for securing it ...

In other words, you have to let the market operate and you have to encourage productivity on that basis. In that way jobs, wages and businesses will be secure. The record stands for itself. What has occurred over the last nine years should be compared—need I remind the chamber again—with the high interest rates, the recession, the loss of jobs and the relatively low wage increases that occurred, particularly in the late 1980s and early 1990s, under the previous Labor government.

The need for reform is generally recognised. It has been recognised by the International Monetary Fund which, in its Staff Report for the 2005 Article IV Consultation with Australia, said:

Further reforms of industrial relations are needed to expand labour demand and facilitate productivity gains.

Indeed, David Burton, the IMF Asia and Pacific Department director wrote to Sharan Burrow at the ACTU saying:

Looking forward, the IMF staff views the proposed industrial relations reforms—

that is, the reforms being introduced by this legislation—

as further steps ... which will improve the functioning of the labour market and help sustain Australia’s strong economic performance in future.

... IMF staff took into consideration that strong protections for employees would remain in place. Again, that is an important thing to note. Despite all the bleating we hear from the other side of the chamber, strong protections for employees do remain in place in this legislation.

The OECD said that there needs to be further workplace relations reform. In its Economic Survey of Australia in February this year it said:

The government is now in a position to address these issues and should proceed as soon as practicable.

Clearly, these reforms are not being introduced on the basis of an ideological whim, which again is misinformation that Labor Party propaganda is putting around. The reforms are indeed clearly supported by a number of bodies, not only within Australia but also internationally—organisations that have the responsibility of overseeing economic wellbeing and reporting on it.

It is important to note that these reforms are evolutionary, not revolutionary. If we look back over the workplace relations debates of the last 25 years, we can see that there is a desperate need for these reforms. I recall in 1987 that Senator George Campbell, when he was in another role, was described by the then Treasurer, Mr Keating, as the man with ‘100,000 dead men around his neck’. That was a direct result of the misuse of union power causing job losses. Since that
time—indeed since 1976, I might note—union membership has dropped from 51 per cent of the work force to 22.7 per cent of the work force in 2004, and in the private sector it is only 17.4 per cent of the work force. Unions have lost their relevance, and the opposition to this legislation is a desperate attempt by the Labor Party, which is beholden to and dependent on the union movement, to try to maintain some relevance for the union movement. It is a goal that is destined to fail, because the broad body of the Australian community understand only too well the benefits that have been derived from the legislation that was introduced and the reforms that came in in 1996, and when these present reforms are in place they will understand only too well the benefits that they will also derive. (Time expired)

Senator SIEWERT (Western Australia) (12.42 pm)—The Australian Greens have proposed some amendments that are quite similar to the Democrats’ amendments so I thought it was opportune to address them now. I will also take the opportunity to address one of our other amendments that is pertinent to this subject. The amendments that the Democrats have put up, and the similar ones that the Australian Greens have put up, go to addressing what we believe should have been in the legislation if we were talking about an Australian ‘Fair’ Pay Commission.

You might at first be mistaken in thinking that there was a slight oversight in that there are no provisions in the bill that implement the ‘fair’ part of the Australian Fair Pay Commission. Yesterday, we had some quite substantive discussion and questions and answers on the intent of the bill and why the provisions of ‘fair’ had not been put in it. During the debate we were told that it is implied in the bill. My question still stands: why isn’t it explicit?

The previous act, and the provisions that the Australian Greens have tried to put back in, are to address that issue of ‘fair’. The existing provisions in the act say that in performing functions under this part the commission ‘must ensure a safety net of minimum standards and conditions’. It says that it must look at that. Whereas, the provisions in the bill say that there must be ‘regard to providing a safety net for the low paid’. It does not define ‘safety net’, whereas in the previous act it was defined—‘a safety net of fair minimum wages’. ‘Safety net’ is not defined in the current bill. When I asked yesterday, I was told that it was not in the bill and that people understand what it is.

‘Low paid’ is not defined in the bill. We probably all understand that one, but it should be defined. Nor is the function of the safety net defined in the bill. So the amendments that the Australian Greens are trying to move go to the very heart of what you would think would be in a fair pay commission. If you have the word ‘fair’ in the name of the commission, anybody in the community would think that that would then be explicitly pointed out in this bill. This bill addresses the so-called economic side of things, but it does not address the human side of things. It does not address fairness for the community or the need of workers to maintain a reasonable standard of living.

It is fair enough if you want to address both—we do need a balance—but all that is in this bill is one side and not the other. One side is clearly spelt out—having regard to the economy—and it is explicit. The other side is implied—having regard to workers and the need for workers to have a reasonable standard of living—and it is not explicit. One is explicit; one is implied. Why not make both explicit? The Greens are moving this amendment in an attempt to make this a fair bill—to make it fair to the community, as its name suggests. If that is not put into the bill,
if it is not made explicit, the Greens are mov-
ing an amendment to take the word ‘fair’ out, so that it is quite clear what this is about. It is about looking after the economy and looking after business mates; it is not about looking after Australian workers. Alternatively, we could call it the ‘Fairy Pay Commission’, because somehow workers are magically going to get a fair go! But fairness is not ex-

plicit in the bill, so let us take out the word ‘fair’, call a spade a spade, and make sure that the community understands that this is not about looking after them but about look-

ing after the government’s business mates.

We keep hearing about evidence. We have heard about what happened in Western Aus-

tralia when similar—although I believe less harsh—measures were introduced in the 1990s, and that is that the minimum wage dropped. It dropped by $50 a week. That is not fair. That is why we need provisions in this legislation to protect peoples’ minimum standards. We need it in the legislation so that people know where they stand.

We have put up two amendments. One is to fix the Fair Pay Commission so that it really does deliver fair wages. The existing act—and this is where I think the govern-

ment is playing with semantics—does re-

quire economic factors. It does require in-

cluding levels of productivity and inflation and the desirability of obtaining a high-level of employment. So the existing act has both; the new one has only one side of things be-

cause fairness is implied, not because it is in there. Let us put it in there. So let us either fix the Australian Fair Pay Commission or get honest and let the community know what is going on, and call it the ‘Australian Pay Commission’ so that its name reflects what is in the legislation.

Senator RONALDSON (Victoria) (12.48 pm)—I want to address some points raised by Senator Evans, particularly in relation to Senator Santoro. I thought it was quite an unreasonable attack on him. I asked Senator Santoro to provide me with some informa-
tion and some figures on what his achieve-
ments were when he was a Queensland min-
ister. It makes very interesting reading. For example, during his time unemployment dropped. During his time, 52 per cent of all employment growth in Australia took place in Queensland. Employment growth ran at 4.3 per cent in the 12 months up to March 1998, in comparison to the national rate of 1.5 per cent. Industrial disputation fell con-

sistently subsequent to the proclamation of the legislation. In March 1977, 172 working days were lost per 1,000 employees, whereas in March 1998 that figure had fallen to 70 working days lost per 1,000 employees. But of greatest interest is the challenge that Sena-
tor Santoro threw out to the Labor Party on the supposed abuse of the exemption to the unfair dismissal laws. Senator Santoro’s challenge to the Labor Party in Queensland was to nominate one case of abuse under those changed circumstances, and not one case of abuse was brought forward.

I also want to address another matter which I think has really underpinned the de-

bate from the other side, and it has been used again and again. That is the obvious, almost pathological, hatred of employers and, par-

ticularly, of small business. I know that Senator Joyce is going to refer to some of those matters soon, so I will not address
them. The trouble with the line that has un-
derpinned the debate from the other side over
the last three days is that there is an assump-
tion that good employers are going to be-

come bad employers. That is the rationale of the debate that we have heard over the last three days. The reality is that, despite the best endeavours of everyone—and I include everyone in this chamber, both political par-
ties, and organisations everywhere—there are bad employers under the existing law.
Therefore, if you want to be a bad employer now, you can be. So why is it that the great bulk of employers, and particularly the great majority of small business people, are good employers under an environment in which we know they can be bad employers? Why is that?

Why is the Labor Party using this fallacy as an argument? What underpins the relationship and what makes employers be good under a system that enables them to be bad is mutual respect between the employer and the employee. What frustrates me, and it has for the last three days and for some time, is the complete and utter lack of understanding from those opposite about the relationship between small business employers and their employees. Regrettably, it comes from the fact that the members of the Labor Party have no experience in being small business employers and therefore they do not understand the relationship and they are unable to intellectually or philosophically rationalise that relationship.

The bottom line is that small businesses have a quite extraordinary relationship with their employees. That relationship is based on mutual respect and trust. That is the core of the relationship: mutual trust, understanding and respect. In many small businesses, people are not employees; they are part of the business and they are assumed to be part of the business. This is because they are pivotal to the running of the business. It is everyone working together to achieve an outcome. That is what makes small business work. That is why small business is such an extraordinary part of our economy. Senator Joyce is going to be referring to that, so I will not go further.

Senator Hogg—They churn them—they turn them over.

Senator RONALDSON—Senator Hogg can interject, but under the present law bad employers can exist. The simple fact is that the great majority of employers are good employers under a system that allows them to be bad employers if they want to be. The very reason that the great majority of small business people are good employers under a system that would allow them to be bad employers is because of the relationship they have with their staff. They are often family businesses, in which their staff are members of the family. To think that the world will suddenly change this afternoon at 6 o’clock and those good employers will become bad employers and abuse their staff is patent nonsense. It shows an almost obscene misunderstanding, deliberate or otherwise, of the relationship between small businesses and their employees, and a real misunderstanding of the way businesses operate.

Senator JOYCE (Queensland) (12.56 pm)—The argument that has been posed by those on the other side of the Senate today is that the sky will fall as of tonight and the world will end. If that is not the case, those on the other side are going to look rather foolish. But I will take up the challenge and pick up the gauntlet. They believe the sky is going to fall, and I believe it is not. If, when
we arrive in this chamber next week, the world—with the new legislation in place—is continuing on basically the way it did, and that continues over time and over the next year, then I suggest that the weight of the argument will move in our direction. Once more, they will be held to account because they predicted the end of the world and it did not come to pass.

Let us look at the facts about the Australian Fair Pay Commission. An additional $29.1 million in funding over four years will be provided for the establishment of the Australian Fair Pay Commission. There is a belief that we are moving into a world in which things will be completely unregulated, there will be no control and people will be completely at the behest of the crocodiles. Supposedly, there will be no protection mechanisms and all of a sudden every employer will morph into some arbitrary mechanism of exploitation. This is great theatre. It has certainly worked—it has scared people. I can scare the kids as well. It is easy to go out and terrorise people and make them fear the future, rather than go forward on a constructive path and create a future for them. I am going to debunk the myth that this is completely arbitrary. There is a process in place, the government is in control of it and the government has a mind to the welfare of workers. The Fair Pay Commission is a great article of faith in that.

The Fair Pay Commission will set and adjust: federal minimum wages; minimum award classification rates of pay; federal minimum wages for juniors and trainees, including school based apprentices and employees with disabilities; minimum wages for pieceworkers; and casual loadings. We have already heard the theatrics about how waiters will have to rely on tips and all that sort of conjecture—or, alternatively, rubbish. That is not the case. The Fair Pay Commission is not going to take into account the tips you may get. These are the theatrics needed to peddle an argument when the substance of it has failed. I like to talk about facts. The minimum award classifications will be protected at the level set by the Australian Industrial Relations Commission’s 2005 safety net review. Minimum and award classifications will not fall below that level and will increase as decided by the Fair Pay Commission.

Once more, I wish to debunk the myth that there is no safety net, that there is nothing happening, that it is all going to end as of six o’clock tonight, that the world will come to a conclusion and that next week people will be being paid, as we heard today, $3 an hour. It is about getting the fear factor out there—make the masses scared, work on their fear and work to the lowest common denominator. When all else fails, just charge for the lowest common denominator—that is, work on the fear factor.

The first decision of the Fair Pay Commission will be no later than spring 2006 and will take into account the time since the Australian Industrial Relations Commission was last involved. Mind you, we have heard in this chamber today that the Australian Industrial Relations Commission is being abolished. It is news to me that the AIRC is being abolished. I will have to tell Senator Abetz. It is not being abolished.

Senator Wong—it cannot do anything. You are taking away all its powers.

Senator Joyce—No, it is not being abolished; thank you very much. Why would they say that? Because they would create a sense of fear to drive a fear factor. They say, ‘We cannot rely on the substance of our argument, so we will go to the lowest common denominator, we will go to the essence, and we will make you insecure.’ The Labor Party will inspire insecurity in you, because they are hoping for a depression. The only way
they will ever get memberships is to wait for a time of misery. They are looking forward to a time of misery to rebuild their union membership.

Union membership is an interesting issue. Let us talk about that for a little while. Do you realise that at the moment there are 1.84 million people in unions? That sounds great, but there are 1.92 million people involved in small businesses. The number of people in small businesses has now exceeded the number of union members. Do you know why that is? It is because people want to take control of their destiny. People want to be master of their own ship. It is what people in the National and Liberal parties aspire to—that you take control of your own destiny, that you make your own future, that you believe in yourself with such structure that you think that you can determine your way forward. We believe in the absolute right that you should be able to be master of your own ship. We wish to inspire in people the highest sense of freedom in their life by being master of their own ship.

Do you realise that there are 5.1 million active ABNs out there in Australia at the moment? Do you know why? It is because people want to be in business. They like the idea of being master of their own ship. It must be galling to those on the other side who rely on union membership to see the end, to see the demise, to see that the sun is going down on union membership and that they have to determine a new agenda to be relevant. They just have to look to Tony Blair. You have to start reading about Tony Blair. Determine a new agenda and move to that new horizon, or you will die and the Greens will take over the left-hand side of your constituency and we will bite into the right-hand side of your constituency and you will become further and further—

*Senator Joyce*—I know it is galling. It is horrible to hear the truth. I understand that it must hurt.

*Opposition senators interjecting—*

*The Temporary Chairman (Senator Forshaw)—Order! Senator Joyce is on his feet.*

*Senator Joyce*—Thank you, Mr Temporary Chair. The truth is a terrible thing.

*The Temporary Chairman—I am just trying to save you, Senator Joyce, so carry on.*

*Senator Joyce*—Thank you very much. The Fair Pay Commission will be made up of five members: a chairman, who can be appointed for a period of up to five years on a full-time or part-time basis, and four commissioners, who can be appointed for a period of up to four years on a part-time basis. The chairman will be required to have high-level skills in business and economics, while the commissioners must have experience in one or more of the following: businesses, community organisations, workplace relations and economics. It could be the case—and this terrifying—that in the future the commission could be made up of union members. What a terrible idea that would be. It could be the future. But to be the future you have to become relevant to the Australian people first so that you can attain government.

The Fair Pay Commission is going to be made up of these creatures called human beings—human beings who have a sense of compassion and logic, who will determine how the environment is working and work within it. We have been presented an image of the Fair Pay Commission being made up of some arbitrary group of ex-Nazis, fascists and gosh only knows what, because it works at that fear thing: let us drive them down—
Senator Wong—Mr Temporary Chair Forshaw, I rise on a point of order. That is a misrepresentation. To my knowledge, no senator in this place has used the term ‘fascist’, and I ask the senator to withdraw it. I understand he wants to engage in a rhetorical message here and verbal and misquote people. The point that the Labor Party and others are making—and the amendments before the chair are making, so the issue is also relevance—is whether the government will support including the word ‘fair’ in the things to which the minister must have regard.

Senator Ronaldson—On the point of order: my clear recollection is that Senator Joyce did not name in either a general sense or a specific sense senators on the other side.

Senator Murray—On the point of order: I have always been concerned when the words ‘Nazi’ or ‘fascist’ are laid too lightly. I have in the past defended the present government of Australia when people have strayed into that area, because those of us like me who have been under tyrannies know what a real tyranny is.

Senator Joyce—I will withdraw—

Senator Murray—But on the point of order, if I may finish: the clear inference was that members of the Fair Pay Commission had been referred to as Nazis or fascists. That has not happened. I have been present throughout the debate. I can understand that it is a question of dramatic rhetoric, but the issue is that senators need to be restrained in the way in which they characterise the arguments of both sides.

Senator McGauran—On the point of order—

The TEMPORARY CHAIRMAN—Senator McGauran, I am ready to rule on the point of order.

Senator McGauran—I wish to give extra background information to you, if it is of any help. The name ‘Goebbels’ has been thrown across from the other chamber—

The TEMPORARY CHAIRMAN—Senator McGauran, resume your seat. I understand that Senator Joyce is prepared to withdraw the remarks that he made, and I accept that. There was no point of order regarding there being a reflection directly upon senators in this place, but I take Senator Murray’s point that, during the debate, to put forward a proposition that senators or members have put forward an argument that certain persons who are Nazis or fascists would be appointed to a judicial or arbitral body is going too far. Senator Joyce, I appreciate that you will withdraw the remarks.

Senator Joyce—Absolutely. I would like to withdraw that from record. It was not a referral to anybody in this house or to any person. It was a statement of a belief that certain people believe a certain ilk or direction. I withdraw it.

The TEMPORARY CHAIRMAN—You have withdrawn your remarks. Do you wish to continue?

Senator Abetz—Mr Temporary Chairman, I rise on a point of order. I think Senator Joyce has acted quite honourably in this, albeit that he said ‘ex-fascists’; not that I think, quite frankly, that makes any difference.

The TEMPORARY CHAIRMAN—What is your point of order?

Senator Abetz—The point of order is that the Leader of the Opposition in this place earlier today referred to the government’s behaviour as ‘Goebbels like’ and, interestingly enough—

The TEMPORARY CHAIRMAN—Minister, there is no point of order.

Senator Abetz—nobody on the other side—
The TEMPORARY CHAIRMAN—
Minister, resume your seat!

Senator Abetz—required it to be withdrawn.

The TEMPORARY CHAIRMAN—
Minister, resume your seat and do not talk over the chair. If you wish to pursue what may have happened earlier in the debate you know you can do that in another way. Let us proceed.

Senator Joyce—There is a belief by some that the Fair Pay Commission will be made up of people, ‘Goebbels like’, who will drive a certain agenda. I do not believe that is the case. I believe that they will actually be made up of—

Senator Murray—Mr Temporary Chairman, I rise on a point of order. I think that is defying your ruling. I put the proposition to you this way. Earlier what was remarked was the following: the advertising campaign of the government was ‘Goebbels like propaganda’. If the government senators want to take issue with that they can. At no time was ‘Goebbels’, ‘Nazi’, ‘fascist’ or any of those titles used with respect to the members of the Fair Pay Commission. The senator, in raising that matter yet again, is defying your ruling and, frankly, showing contempt for the proposition you have put.

The TEMPORARY CHAIRMAN—
Thank you, Senator Murray.

Senator Joyce—I will withdraw ‘Goebbels like’ and—

The TEMPORARY CHAIRMAN—No, you withdraw the remarks and proceed.

Senator Joyce—I withdraw. Let us get back into the real game. The real game is this: over the period of the National-Liberal, Liberal-National coalition, there has been a 14.6 per cent real growth in wages. If it stands to form that we are the grand arbiters of people, trying to drive down the worker and basically exploit them, then we have gone about it in a very peculiar way, in that we have actually had a real increase in wages of 14.6 per cent. I think that is a bit of a record. I do not think it has been matched; I do not think the Labor Party matched that. So in our attempt to exploit the workers we have managed to deliver a better outcome than the Labor Party ever did.

Senator Ronaldson—1.2 per cent in 13 years.

Senator Joyce—Senator Ronaldson tells me that it was 1.2 per cent in 13 years. Thank you for your assistance. We are on the record for what we have done. The fear factor that the opposition are trying to drive into the debate is not factually correct. You have to be able to base the premise of your argument on fact, and it is lacking in fact. Under the National-Liberal, Liberal-National coalition, 1.7 million new jobs have been created. So the premise of the argument that we have been exploiting workers is unfounded. The substance of the opposition’s argument is without form. There is no logic. When an argument is tired of logic and substance, you go to the emotion—and that is where they live at the moment: they live in the emotion because there is no factual content to what they say.

The Australian people will realise on Monday that the sky has not fallen and there is a clear direction. They take on trust what the government is intending to do. There is a program forward. That program will lead to a greater prosperity. There will continue to be a growth in small businesses. There will continue to be a growth in new ABNs. There will continue to be a growth in the economy. There will be a continued belief that the National-Liberal coalition is the best form of government to take our nation forward, and we will be returned at the next election.
The TEMPORARY CHAIRMAN (Senator Forshaw)—The question is that the amendments moved by Senator Murray, being (4), R(5), (6), (20) and R(20C) on sheet 4765 revised, be agreed to.

Question put.

The committee divided. [1.17 pm]

(The Chairman—Senator JJ Hogg)

AYES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Campbell, G.
Carr, K.J. Couroy, S.M.
Crossin, P.M. Evans, C.V.
Faulkner, J.P. Fielding, S.
Forshaw, M.G. Hogg, J.J.
Hurley, A. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. Moore, C.
Murray, A.J.M. Nettle, K.
O’Brien, K.W.K. Polley, H.
Sherry, N.J. Siewert, R.
Stephens, U. Sterle, G.
Stott Despoja, N. Webber, R.*
Wortley, D.

NOES

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Fierravanti-Wells, C.
Fifield, M.P. Heffernan, W.
Hill, R.M. Humphries, G.
Johnston, D. Joyce, B.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J.* Minchin, N.H.
Nash, F. Parry, S.
Patterson, K.C. Payne, M.A.
Ronaldson, M. Santoro, S.

Scullion, N.G. Trooth, J.M.
Troid, R.

PAIRS

Hutchins, S.P. Watson, J.O.W.
Milne, C. Kemp, C.R.
Ray, R.F. Ferris, J.M.
Wong, P. Vanstone, A.E.

* denotes teller

Question negatived.

Senator MURRAY (Western Australia) (1.20 pm)—Previously the Senate gave me leave to move items (3), (7), (17A), (19), R(19A), R(20A), R(20B) and (57) together. I wish to do that, but I want to extract (17A) from that list so that we deal with (3), (7), (19), R(19A), R(20A), R(20B) and (57) on sheet 4765 revised together. I seek leave to take (17A) out of the group.

Leave granted.

Senator MURRAY (Western Australia) (1.21 pm)—by leave—I move Democrat amendments (3), (7), (19), R(19A), R(20A), R(20B) and (57) on sheet 4765 revised:

(3) Schedule 1, item 10, page 28 (after line 10), after paragraph 7H(a), insert:

(aa) monitor and investigate pay equity and publish annually in relation to wage differentials between men and women in relation to work of equal and comparable value;

(ab) take into account outcomes of (aa) before setting FMW and APCSs;

(ac) in accordance with 90AA, review any decision in relation to the FMW or APCSs if gender related under-valuation has been identified as a result of a sex discrimination complaint to the Human Rights and Equal Opportunity Commission;

(ad) provide simplified proceedings for the conduct of matters arising under paragraph (ac) which comply with sections 44F and 44G;

(7) Schedule 1, item 10, page 29 (after line 25), after subsection 7K(2), insert:
(2A) Despite subsection (2), the AFPC must consult with the Human Rights and Equal Opportunity Commission before introducing or changing an APCS.

(19) Schedule 1, item 43, page 57 (after line 31), paragraph 83BB(1)(h), insert:

(ha) investigate, research and regularly publish the results of a representative annual survey of both collective agreements and AWAs for the purpose of determining wage differentials between men and women carrying out work of equal and comparable value;

R(19A) Schedule 1, item 43, page 58 (after line 26), insert:

(c) the principle that men and women should receive equal remuneration for work of equal value.

R(20A) Schedule 1, item 71, page 69 (after line 8), insert:

90AA HREOC to investigate allegations of discrimination

In exercising any of its powers under this division, the AFPC is to have regard to any relevant recommendations made by HREOC with respect to discrimination, in accordance with powers conferred upon them under the Human Rights and Equal Opportunity Act 1986.

R(20B) Schedule 1, item 71, page 70 (lines 23 to 26), omit definition of employee with a disability, substitute:

employee with a disability is as defined by the Disability Discrimination Act 1992.

(57) Schedule 1, item 74, page 344 (line 29) to page 345 (line 4), omit subsections 170BAC(2) and (3).

Before I speak to that group of amendments, I want to reflect briefly on some of the remarks made in the earlier discussion. I am one of those people in this parliament who have great respect for and recognise the long political experience, acumen and ability of the Prime Minister, who, from the ranks of the coalition, is certainly pre-eminent in political skill. I suggest, through the chair, that Senator Joyce spend a bit of time at the feet of the Prime Minister and learn some words of wisdom. The one mistake the Prime Minister would never make would be to take the Australian people for granted. Senator Joyce stands up there, full of self-congratulation, and says, ‘We will get re-elected.’ Through you, Chair, the Prime Minister would never make that mistake. Never, ever take the Australian people for granted. I have heard him say that a thousand times, and his great wisdom on this is something that any new senator should absorb. I would urge you to avoid claiming that you are going to win the next election. Do not take the Australian people for granted. The Australian people will give you a whack if you do.

The second point I want to make—and it refers to the general debate—is on this issue of fear. People are afraid of losing wages and conditions. Parliamentarians, who represent the people, need to recognise that, whether they are promoting the government’s agenda or opposing it. Those promoting the government’s agenda need to allay those fears and those opposing it need to expose those fears. The fact is that in 1996 the very strong objection of the Labor Party to what was proposed was of course to the bill as unamended. The bill was amended by the Democrats, and the 176 amendments that we put into that bill in fact enabled much of the fear to fall away. The consequence of those amendments was that the Workplace Relations Act remained economically effective but became socially acceptable.

The merits of that act are apparent in the good performance of the Australian economy. That act has made its contribution, and the Democrats can rightly claim to have played a part in that. It has made its contribution to lower disputation, higher real wages,
higher employment, the growth of GDP and the 1.7 million jobs that it created. But there have also been other contributions, such as the economic reforms in the Labor years and the economic reforms in the coalition years. So, as Senator George Campbell would say, it is a multifactor kind of situation. But to claim that it is just fearmongering means that the people have not attended to the very radical nature of the changes that are presented, which do attack the institutional system that we presently have to address the issues of wages and conditions.

The third brief set of remarks that I wish to make is that many of the coalition speakers continue to spit out this class hatred of unions. It is quite amazing. It is amazing to me that they have a love of employer organisations and a hatred for unions on a sort of class, squirearchy, historical basis. Frankly, both are essential to our society—both those who represent collective capital and those who represent collective labour.

It is distressing but, I think, very revealing to see that the real intent of this bill is in fact political. You can hear it in the speeches. If they can hurt the unions and the union movement they are going to hurt the Labor Party. If they hurt the Labor Party they will get re-elected. If that is the motive you are exposing through your speeches then carry on, because the more you are broadcast, the more you are putting out that motive, people will read between the lines. They are up there in the galleries. They hear what we are saying, and they are getting the message loud and clear. This is about hammering the Labor Party through hammering the union movement. That is what you are saying. There is constant reiteration of ‘the dreadful unions’, what the unions do and this and that about the unions. I think it reflects very badly on the government.

Senator Joyce is one of those who keep turning to facts. I agree with him: facts are important. That is why I have emphasised throughout this debate that, in complete contrast to the GST, there has been no modelling, no tables, no cameos, no economic data provided to substantiate the propositions being put by the government. If, therefore, what is exposed is a decades long held desire by a section of the conservative forces of this country to undo and attack the way in which work arrangements have been resolved in this country, if that is your motive and it is an honest motive, by all means expose it. But do not pretend that it is in the national interest if it is merely an expression of class hatred and class antagonisms which reach deep into the history of Australia. I must say that I am quite amazed at the openness with which they expose their real prejudices and loathings.

There are thugs who are employers; there are thugs who are unionists. Unfortunately, to pervert a biblical saying, the thugs will always be with us, and they will be with us on both sides. Because there are thugs in the union movement, that is no reason for the coalition to damn the entire union movement. It is also, of course, no reason to do the reverse—to damn the entire employer and business sector, who are so important and so vital to us. That brief reaction of mine will undoubtedly, as matters like this do, create a counter-reaction. Nevertheless, I felt it important to put on the record my observations, having listened to what went on earlier.

The other thing I would say is that, as is the way with these highly emotional and important debates, it is getting a bit ratty and thus descending to the equivalent of second reading debate speeches on both sides. I do not point the finger at the minister or the shadow minister in that respect, but it would probably be wise if, as we go on, we kept—which I have not quite, I might say—to the
amendments at hand because we have a lot of business still to get through.

In moving that group of amendments, I wish to speak briefly to them. The Australian Bureau of Statistics’s latest social trend data shows that there is still a significant wage gap between men and women and that this gap has changed little under the Howard government. What is more, the government’s proposed industrial relations reforms are likely to increase the wage gap and force women out of the work force. The ABS social trend report found that women earned an average of $611.50 a week, or 68 per cent of the average $897.50 pay packet taken home by men. The report also looked at the average hourly ordinary-time earnings for full-time non-managerial adult workers, which showed that women’s earnings were 92 per cent of men’s. Some analysts have argued in the past that the gender pay gap exists only because men work more hours. This data clearly shows that, when you compare average hourly rates, women are still earning less than men, even when they are doing the same jobs—not always, but as a general rule.

There was also evidence that, during the period of the Court government in Western Australia where an industrial relations system similar to that proposed by this bill was introduced, the result was that women in WA fared badly relative to males and to other women in Australia. The figures are that, in February 1992, the Western Australian gender pay gap was 22.5 per cent and by May 1995 it had widened to 27.8 per cent. HREOC submitted to the committee inquiring into this bill that the bill does not provide ‘adequate or appropriate mechanisms for equal remuneration to be achieved between men and women’. HREOC also argued that the existing equal remuneration provisions of the Workplace Relations Act 1996 and the previous Industrial Relations Act 1988 had been ‘singularly unsuccessful in achieving pay equity’. HREOC was concerned that the Work Choices bill will not address this issue. From those remarks, it is clear of course that this has been a long-term issue for governments of both persuasions.

The amendments that followed were recommended by HREOC as important to address pay equity for women. Our amendment (3) introduces into the function of the Fair Pay Commission a role for the Fair Pay Commission to monitor and investigate pay equity, to publish annually in relation to wage differentials between men and women in relation to work of equal and comparable value, to take into account outcomes of the above before setting the federal minimum wage and the pay and classification scales and to review any decision in relation to the federal minimum wage or the pay classification scales if gender related undervaluation has been identified as a result of a sex discrimination complaint to the Human Rights and Equal Opportunity Commission. In combination, amendment R(20A) facilitates the provision in amendment (3) and states:

In exercising any of its powers under this division, the AFPC—
That is, the Fair Pay Commission—
is to have regard to any relevant recommendations made by HREOC with respect to discrimination, in accordance with powers conferred upon them under the Human Rights and Equal Opportunity Act 1986.

Amendment (7) requires that the Fair Pay Commission consult with the Human Rights and Equal Opportunity Commission before introducing or changing an Australian pay and conditions standard. Amendments (19) and R(19A) aim to require the Employment Advocate to investigate, research and regularly publish results of a representative annual survey of both collective agreements and Australian workplace agreements for the purpose of determining wage differentials between men and women carrying out work
of equal and comparable value. In performing its function, it must have regard to the principle that men and women should receive equal remuneration for work of equal value.

Democrats amendment (57) reinstates the Industrial Relations Commission’s ability to deal with equal pay applications by repealing subsections (2) and (3) of section 170BAC in item 74. This amendment ensures that the Industrial Relations Commission can hear applications from women or groups of women employed on the APCS—that is, women who would have formerly been award dependent women. The amendment is necessary because there is no capacity to initiate consideration by the Fair Pay Commission for equal pay to redress undervaluation. The amendment also removes the reference to comparatives, which is a reference that assumes that equal pay applications involve direct discrimination. This is not true. Indirect discrimination may also be a cause of unequal pay and so reference to comparatives unduly restricts the breadth of the equal pay provisions.

The final amendment in this group, amendment R(20B), relates to the definition of people with a disability. The bill requires the Fair Pay Commission to have regard to the principles contained in antidiscrimination law, including the Commonwealth Disability Discrimination Act 1992. It will be illegal to dismiss an employee because of his or her disability. The problem is that the bill defines an employee with a disability narrowly as someone who qualifies for a disability support pension in the Social Security Act. This is a very restrictive definition of disability in terms of protecting employees with disabilities, especially from unfair dismissal. We should recognise that there are people with disabilities who do not choose to register their disability because they are very proud and do not want to be seen as dependent on

We on this side believe that, whilst like any section of the community the trade union movement should be listened to, because we are interested in every single individual in Australia, the union movement has forfeited its right to claim the status it previously enjoyed because it no longer covers the work force. It is a minority of 17 per cent. The other 83 per cent need to have their voice given expression to as well. We believe that it is the likes of those who voted for us at the last election who represent that voice. Whilst we listen to the trade union voice, we believe that it has forfeited its right, given its abysmal support within the work force itself.

Senator Siewert previously made a comment that the word ‘fair’ should be deleted from the Australian Fair Pay Commission because it is no longer under the principal objects of the legislation. Now the word ‘harmonious’ has been included, so possibly
we could settle on it being called the ‘Australian Harmony Council’. This is the level to which we have descended. I respectfully suggest that we move on from those debates, and I will. Let us move on to the amendments. I think I have thrown Senator Murray somewhat by indicating that we would agree to amendment R(17A), and that is why that particular amendment has been excised from this batch. When Senator Murray introduces it, I will not be speaking to it because we support it. I am sure Senator Murray will be putting his case.

In relation to amendments (3) and (7), proposed section 7K(2) on page 29 says that the Australian Fair Pay Commission may inform itself in any way it thinks appropriate, including by undertaking or commissioning research, community consultation, and monitoring and evaluating the impact of its decisions. The Australian Fair Pay Commission will also be required to apply the principle that men and women should receive equal remuneration for work of equal value, which is stated at proposed section 90ZR(1)(a) on page 99. It is a matter for the Australian Fair Pay Commission as to how it discharges its statutory duties within the broad parameters set by the bill. It would be open to the commission to consult with specialist bodies, such as the Human Rights and Equal Opportunity Commission. Individual complaints about pay inequity will be dealt with by the Australian Industrial Relations Commission under division 2 of part VIA of the legislation.

Just whilst we are on the Industrial Relations Commission—the body that those opposite claim to be so supportive of and that is sacrosanct, should not be touched and should not be interfered with—let us just remember what Labor did to the Conciliation and Arbitration Commission when they were in government. They sacked the lot, abolished the commission and then re-established it under the guise of the Industrial Relations Commission. The judicial personnel of the new body were identical to the judicial personnel of the extinguished one, save one person, Justice Staples, who they then retired on a $90,000-a-year pension. So if this is some hallowed group of individuals that should be treated with such discretion and with such a hands-off approach, well—excuse me—your actions speak louder than words. When it suits you, you are willing to abolish the whole lot, re-establish it and get rid of those people that you do not like. I do remind you that on one occasion Mr Kelty referred to an AIRC decision as ‘vomit’. So if you ask us to treat that body with respect, as we do, then you have to make sure that you have treated it with respect. Of course, you have not in the past.

I move to Democrat amendment (19). It is not appropriate that the Office of the Employment Advocate be required to produce reports of the kinds suggested in the Democrat amendment. Section 358A of the act requires the minister to cause regular reports to be provided regarding developments in agreement making. This reporting obligation, which will be retained by the bill, includes reporting on the effect of bargaining during the relevant period upon women—that is mentioned—part-time employees, persons from non-English-speaking backgrounds and young persons. Given this reporting requirement in section 358A, the amendment suggested by the Democrats, we submit, is unnecessary. I think what I have just read out covered both amendments (19) and R(19A) so I will move on to amendment R(20A). The Australian Fair Pay Commission can consult with a range of stakeholders, which would include bodies such as HREOC. It can also receive or ask for submissions and recommendations from such stakeholders. I do not think I need to delay any further on that.
In relation to amendment R(20B), the definition of ‘employee with a disability’ is purposefully narrow in scope and application. The definition will only apply in relation to proposed division 2 in part VA. It is not relevant outside division 2. It ensures that the ability of the Australian Fair Pay Commission to determine an Australian pay and classification standard with a pro rata wage rate only applies to employees who are eligible for the disability support pension—that is, restricted to those employees who are unable to earn a full rate of pay. So whilst I accept that the Democrat amendment in this regard is well motivated and genuine, nevertheless, when you go through the detail of the legislation, it does make sense that it should be restricted to those employees who are unable to earn a full rate of pay. The Democrat amendment would allow such a classification scale to be provided for pro rata wage rates to apply to employees who can earn a full rate of pay, and we believe that that is not necessary.

In relation to amendment (57), I indicate that I think I have covered the matters in my previous contribution. Can I have an indication as to how long Senator Wong might be on this and how the proceedings are going in relation to potentially excusing myself from the chamber for about 15 minutes?

Senator WONG (South Australia) (1.45 pm)—Far be it from me to request that you stay in the chamber, Minister! I have had some brief discussions with my colleagues on the crossbenches. As senators and those who are present or listening may or may not know, the Senate is dealing with a bill and explanatory memorandum which I think would total close to 1,500 pages now. The bill itself is almost, I think, 700 pages, the explanatory memorandum for that is 600 or 700 pages and then there are 100 pages of amendments that were tabled yesterday about half an hour before the debate began.

There is clearly not enough time to debate all of these issues, because the government has guillotined this debate to conclude at 4.30 and we are about two pages into a 10-page running sheet.

The opposition has tried, certainly, to progress through this. What we would be suggesting, and I think I indicated this at the outset of the discussion in relation to this set of amendments, is that we vote on the Democrat amendments before the chair, the subsequent Democrat amendments, the Greens amendments also before the chair and the government amendments. We would not propose from this side of the chamber to engage in substantial debate on those; we think those issues have been covered.

The opposition would propose, given that not all of this will be debated, that we move to the unfair dismissal amendments. We think that is a substantive debate. It is an issue that the Senate inquiry was not permitted to inquire into and it involves changes to unfair dismissal which I think even the government concedes go well beyond what it indicated to the electorate at the election. We think it is deserving of a debate. I put on record our concern that we are unable to engage in a substantive debate on so many other issues in this bill. We are in a position as senators in this chamber of having an extraordinarily limited time to deal with some very controversial and difficult amendments, which would be the largest changes in 100 years. But at this stage I would like to make clear that we do not want to have this bill passed without having the opportunity to debate at least unfair dismissal. There are a number of other issues as well, but that certainly would be our next priority.

Senator ABETZ (Tasmania—Special Minister of State) (1.47 pm)—If that is the wish of the opposition, subject to the other minority parties expressing possibly some
preference for some issues, I am largely relaxed on behalf of the government as to which issues honourable senators wish to canvass. To assist me in my request, I was wondering whether Senator Wong could indicate whether, when we move to all these votes, the Senate will be dividing on those or not?

Senator Wong—They are Senator Murray’s amendments, so he probably would be best placed to indicate that.

Senator ABETZ—If not, I will excuse myself from the chamber. Of course, if we are having divisions, I will not to be able to excuse myself from the chamber and I will be required to come back.

Senator MURRAY (Western Australia) (1.48 pm)—Minister, if you require us to talk whilst you are gone, we can do that. But, just to let you know, we do intend to call a division. It is up to the Labor whip, of course—they could offer you a pair for 15 minutes if that was necessary. I do not see why not, but that is up to them. The point I want to make through the chair is that you will need to guide us as to what the section is. As I understand it, we are being asked to shift, once page 2 on the running sheet is complete, to page 5—it starts with a government amendment on constructive dismissal—and then move on through page 6. Would that be a right interpretation of what we are being asked to consider?

The TEMPORARY CHAIRMAN (Senator Troeth)—Yes, that appears to be the case.

Senator MURRAY—The Democrats would have no objection, then, if that is what the opposition wishes to do.

The TEMPORARY CHAIRMAN—If I can clarify it with you, would this be moving to schedule 1 after item 105?

Senator MURRAY—Yes, at the bottom of page 5 and on to page 6, because that seems to me to pick up all the unfair dismissal areas. I can only speak for my party, but we do not mind that.

Senator FIELDING (Victoria—Leader of the Family First Party) (1.50 pm)—I can understand the reasons behind doing this, so I would say that it would have Family First support. We have put one amendment forward on the issues of overtime, penalty rates and shift work. The other one is on meal breaks. If we could have the discussions facilitated in such a way that we could move on to the unfair dismissal, I think that would ensure that most of the opposition and those on the crossbenches have their issues covered.

The TEMPORARY CHAIRMAN—Senator Fielding, is the item which you are referring to schedule 1, item 71, overtime penalties and shift work protected?

Senator FIELDING—That is correct.

The TEMPORARY CHAIRMAN—So you would like to have that dealt with after we deal with these Democrat amendments before we move to unfair dismissal. Is that the case?

Senator FIELDING—That is correct, and also schedule 1, item 72, guaranteed meal breaks.

Senator WONG (South Australia) (1.51 pm)—I apologise to Senator Fielding, who was not in the chamber when I was consulting the crossbenches on my proposition. I am conscious that he has not had much opportunity to engage in the debate. I am conscious that he has not had much opportunity to engage in the debate. The opposition would be minded to facilitate Senator Fielding’s amendments, on the proviso that the government understands and is willing to cooperate in facilitating debate on that, in order to enable a proper debate to be had on the unfair dismissal provisions. I would like that indication from the government; I un-
I understand that Senator Abetz indicated that he was amenable—

Senator Coonan—I think that’s right.

Senator SIEWERT (Western Australia) (1.52 pm)—I am amenable to the proposition that Senator Wong just put; so are the Australian Greens.

Senator McGAURAN (Victoria) (1.52 pm)—I would like to be able to address some of the remarks that Senator Murray previously—

Senator FIELDING (Victoria—Leader of the Family First Party) (1.53 pm)—I do not want to cut across Senator McGauran being able to speak on another issue, but could we get a response to what was being talked about—facilitating discussion of a couple of items?

The TEMPORARY CHAIRMAN—Yes, I think Minister Coonan has already signalled that—

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (1.53 pm)—Yes, Senator Fielding, Senator Wong had outlined, I think, the position of everyone in the chamber, in response to a request from Senator Abetz, who needed to absent himself very briefly. My understanding is that the government has agreed to this facilitation.

Question put:

That the amendments (Senator Murray’s) be agreed to.

The committee divided. [1.58 pm]

(The Chairman—Senator JJ Hogg)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>32</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noes</td>
<td>35</td>
</tr>
<tr>
<td>Majority</td>
<td>3</td>
</tr>
</tbody>
</table>

AYES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Campbell, G.

Conroy, S.M.
Crossin, P.M.
Faulkner, J.P.
Hogg, J.J.
Kirk, L. *
Lundy, K.A.
McEwen, A.
Moore, C.
Nettle, K.
Polley, H.
Siewert, R.
Sterle, G.
Webber, R.

Evans, C.V.
Forshaw, M.G.
Harley, A.
Ludwig, J.W.
Marshall, G.
McLucas, J.E.
Murray, A.J.M.
O’Brien, K.W.K.
Sherry, N.J.
Stephens, U.
Stott Despoja, N.
Wortley, D.

Abetz, E.
Barnett, G.
Brandis, G.H.
Campbell, I.G.
Colbeck, R.
Eggleston, A.
Ferguson, A.B.
Fifield, M.P.
Hill, R.M.
Johnston, D.
Lightfoot, P.R.
Macdonald, J.A.L.
McGauran, J.J.J. *
Nash, F.
Patterson, K.C.
Ronaldson, M.
Scullion, N.G.
Trood, R.

Adams, J.
Boswell, R.L.D.
Calvert, P.H.
Chapman, H.G.P.
Coonan, H.L.
Ellison, C.M.
Fierravanti-Wells, C.
Heffernan, W.
Humphries, G.
Joyce, B.
Macdonald, I.
Mason, B.J.
Minchin, N.H.
Parry, S.
Payne, M.A.
Santonio, S.
Troeth, J.M.

Hutchins, S.P.
Milne, C.
Ray, R.F.
Wong, P.

Watson, J.O.W.
Vanstone, A.E.
Ferris, J.M.
Kemp, C.R.

* denotes teller

Question negatived.

Senator MURRAY (Western Australia) (2.01 pm)—I move:

R(17A) Schedule 1, item 20, page 45 (line 5), omit “without discrimination based on sex”.

If you can have an historic occasion in one day, this is it, because the government are going to support amendment (17A). It effectively takes out a redundant provision. I
thank the government for supporting the amendment.

Question agreed to.

Senator MURRAY (Western Australia) (2.02 pm)—by leave—I move amendments (14) and (15) on sheet 4765 revised:

(14) Schedule 1, item 20, page 44 (line 17), after “economy”, insert “and society”.

(15) Schedule 1, item 20, page 44 (line 27), after “economy”, insert “and society”.

The Workplace Relations Act states:

(1) In the performance of its functions, the Commission shall take into account the public interest, and for that purpose shall have regard to:

(a) the objects of this Act and …

(b) the state of the national economy and the likely effects on the national economy of any … order that the Commission is considering, or is proposing to make, with special reference to likely effects on the level of employment and on inflation.

I have added the words ‘and society’. In item 2 I have again added the words ‘and society’.

It is a specific attempt on my part to reinforce the values which have underpinned our system. Our system has said that for poor, disadvantaged or powerless people at the bottom of the scale, both employers and employees, society has to be taken into account—in other words, the contribution that is made to the general social character and the social contract in Australia. The specific ideas of the fair go principle, of the safety net and indeed of minimum wages and so on are that the social impacts have to be taken account of.

Society is broader than the family, but it does include those very notions which lie behind the idea that every family should be able to receive an income—whether it is a wage, a welfare income or a combination of the two—which enables it to have a reason-
figures. The ABS have the facts and figures on how women have fared under the 1996 reforms right up to the year 2005.

Assertions are made, particularly by Senator Wong, that there have been reduced job security and lower wages for women, that there has been a widening gap in pay between men and women, that there is less capacity to balance work and family since 1996 and that women are at a disadvantage when making workplace agreements. They are disproved by the facts.

Senator Wong—You just voted against pay equity!

Senator McGauran—I challenge you to come into this chamber, Senator Wong, and disprove the Bureau of Statistics facts. The unemployment rate for women is 5.2 per cent. That is the lowest since 1978. There have been 863,000 new jobs created for Australian women. This equates to a 23.7 per cent rise in female employment under the Workplace Relations Act since 1996, so there has been an increase in the female employment rate. Also, some of the assertions relate to the casualisation of women in the work force. Again, the ABS figures show that nothing could be further from the truth—not that there is anything wrong with casual work. In fact, I would say that women seek casual work more than full-time work.

Unfortunately, time does not permit me to give you every detail of the ABS facts and figures, but I simply say in general terms that there has been an increase in women in employment, there has certainly been no increase in the casualisation of women in the work force, there has been an increase in the number of women taking up full-time employment and there has been a reduction in the gender gap since 1996. This all relates to the fact that they have been given greater flexibility and choice within the workplace.

As you know, this government has relied heavily on our record of commitment to the working men and women of Australia. Our record in general has been stated by previous speakers—that is, the general unemployment rate has come down while general employment has increased and wages have generally increased across the economy. We can point to specific figures in relation to that sector of the work force that you paint as the most vulnerable—that is, women—which show that, since the 1996 reforms, standards have increased by every single benchmark you wish to use. If time permitted, I would read every single statistic out to you. I challenge you to refute those ABS figures with regard to the gender gap, full-time employment, job satisfaction and flexibility.

Senator STEPHENS (New South Wales) (2.11 pm)—I will make a very brief contribution to this debate. I cannot let that comment go unrefuted. I place on the record for everyone to understand that Senator McGauran is trying to defend the record of this government, and the government senators today have just voted against pay equity. I think that is important for Australian people to understand.

Senator MURRAY (Western Australia) (2.12 pm)—I thought Senator McGauran made some excellent points. He indicated that, since the 1993 act and the 1996 act, progress has been made, but this bill seeks to take away the mechanisms that allowed for that progress to be made. What the previous amendments did was try to put back those mechanisms which would allow more progress to be made and to put into the legislation the recommendations of the Sex Discrimination Commissioner, Ms Pru Goward, and her team. I think Senator McGauran made an excellent case for why he should have supported the previous amendments.
Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (2.13 pm)—I am going to return to Senator Murray’s amendments, which relate to the wage-setting parameters. I will be brief. They address the public interest in a way that calls for some comment from the government. My understanding is that, during the questioning of the ACTU, Senator Murray had indicated that the Democrats would move an amendment to the Work Choices legislation to include the current parameters that influence the decisions of the AIRC in the legislative parameters of the AFPC. As I understand the amendments, Senator Murray specifically proposes to include the current section 88B(2) and section 91. Senator Murray is particularly concerned, as I understand from the way in which he puts the support for his amendments, that the Fair Pay Commission’s parameters do not adequately capture and reflect the public interest. The precise wording of the AFPC’s legislative parameters have been fully debated, and the parameters are—

Senator Murray—I rise on a point of order, Madam Temporary Chairman. It is always difficult for a minister just standing in for the previous minister. Regrettably, Minister, you are referring to some other amendments, not to amendments (14) and (15) on sheet 4765 revised, which are before the chair at the moment. I do not criticise you for it, because we are dealing here with 150 different pages and to just walk in and have to stand in for somebody else for a short while is very difficult.

Senator COONAN—Senator Murray, I thank you for the interjection and the concern that you show for my position of filling in for the minister for a short time, but my advice is that I was precisely on the point that the minister wished to have advanced in response to what you had put in support of your amendments. The parameters are intentionally designed to introduce greater vigour, certainly greater economic vigour, into the determination of minimum wages. The guiding objective of the AFPC is, of course, to promote the economic prosperity of the population more broadly. The tax transfer system is, in the government’s view, the appropriate mechanism to address broader social issues, by, for example, reducing the tax burden on low-paid workers or increasing family benefits. We believe very strongly that the legislative parameters do represent a significant improvement and that the public interest is appropriately reflected in the way that I have outlined.

Question put:
That the amendments (Senator Murray’s) be agreed to.

The committee divided. [2.21 pm]
(The Chairman—Senator JJ Hogg)

Ayes………… 31
Noes………… 35
Majority……… 4

AYES

NOES
Adams, J. Boswell, R.L.D. Calvert, P.H. Chapman, H.G.P. Colbeck, R.
Senator SIEWERT (Western Australia)
(2.24 pm)—I move Australian Greens amendment (5) on sheet 4766 revised:

(5) Schedule 1, item 10, page 28 (after line 16),
after section 7H, insert:

7HA Performance of AFPC functions

(1) In performing its functions under this Part, the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:

(a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;

(b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;

(c) when adjusting the safety net, the needs of the low paid.

(2) In performing its functions under this Part, the Commission must have regard to the following:

(a) the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed;

(b) the need to support training arrangements through appropriate trainee wage provisions;

(ba) the need, using a case-by-case approach, to protect the competitive position of young people in the labour market, to promote youth employment, youth skills and community standards and to assist in reducing youth unemployment, through appropriate wage provisions, including, where appropriate, junior wage provisions;

(c) the need to provide a supported wage system for people with disabilities;

(d) the need to apply the principle of equal pay for work of equal value without discrimination based on sex;

(e) the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

(3) For the purposes of paragraph (2)(e), junior wage provisions are not to be treated as constituting discrimination by reason of age.

(4) For the purposes of paragraph (2)(e), trainee wage arrangements are not to be treated as constituting discrimination by reason of age if:

(a) they apply (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or

(b) they contain different rates of pay for adult and non-adult employees.
participating in an apprenticeship, cadetship or other similar work-based training arrangement.

I do not intend to speak for very long; we have been through these issues quite substantially. Senator Joyce mentioned earlier that the AFPC was modelled on the British Low Pay Commission. I would like to point out that I believe that is taken slightly out of context. The analysis of the activities of the British Low Pay Commission in the wider context makes it clear that it is quite different from the proposal for the Australian Fair Pay Commission. The British Low Pay Commission fitted inside a wider social agenda. Evidence from the UK on the British version shows that there has been a 40 per cent increase in the national minimum wage since 1977. Overall employment has increased amongst this group of workers and the sectors which are affected by the Australian minimum wage. In other words, it is not correct to compare the proposed commission in Australia with the British version because it is substantially different. There are substantially different parameters around it and, despite the fact that the minimum wage has increased, we have also increased employment. Going back to the issue of putting fairness explicitly into the Fair Pay Commission, it is quite clear that you can deliver economic growth and equity and fairness for workers if it is in the requirements of the Fair Pay Commission. I will leave it at that.

Senator Wong—You are taking it out of the legislation. That is the issue.

Senator Abetz—We are taking it out of the legislation, yes, and we are including the word ‘harmonious’, which was not in the legislation before. Taking that logic, those on the opposite side have never believed in harmony in Australian workplaces. For me to make that proposition is as ridiculous as it is for those opposite to suggest that we do not believe in fairness. Ask yourself this question: how do you get harmony in a workplace? How do you get harmony in a political party—something those opposite might not understand? How do you get harmony in any relationship? By everybody in that relationship being fair and reasonable. Therefore, you do not have to spell out that it has to be fair, because it is implicit.
Of course, neither side has proposed the word ‘good’—that the Australian Fair Pay Commission has to make good decisions, or genuine decisions or sincere decisions. Does that mean that nobody in this parliament believes in good, genuine or sincere decisions? Of course it does not. You have to look at the actual parameters. Sure, the word ‘fair’ is no longer used; the word ‘harmonious’ is. At the end of the day—give us a break—I think the average Australian fully understands what the implication of all this is, and to try to play these semantic word games does those opposite no justice.

The proof of the pudding will be in the pay packets and not the propaganda. We have now had 10 years of propaganda from those opposite, saying that under a Howard government wages and standards will fall, when the exact opposite has been the truth, as is so easily demonstrated by objective information by any standard. There has been an increase in real wages, a decrease in unemployment and the lowest rate of industrial disputation ever. The facts speak so much louder than the propaganda from the other side. We oppose the amendment.

Question negatived.

Senator SIEWERT (Western Australia) (2.31 pm)—by leave—I move Australian Greens amendments (1), (2) and (3) on sheet 4766 revised:

1. Page 1 (line 1) to page 687 (line 28), omit “Australian Fair Pay Commission” (wher-ever occurring), substitute “Australian Pay Commission”.

2. Page 1 (line 1) to page 687 (line 28), omit “AFPC” (wherever occurring), substitute “APC”.

3. Page 1 (line 1) to page 687 (line 28), omit “Australian Fair Pay and Conditions Standard” (wherever occurring), substitute “Australian Pay and Conditions Standard”.

This amendment is on the same issue as amendment (5). It removes the word ‘fair’ from the Australian Fair Pay Commission. It is not about semantics. This is real. This is about what the Australian Fair Pay Commission is required to take into account and to deliver. I will not go into the arguments again; we have spent enough time on this issue.

Question put:
That the amendments (Senator Siewert’s) be agreed to.

The Senate divided. [2.36 pm]
(The Chairman—Senator JJ Hogg)

Ayes……….. 33
Noes……….. 37
Majority……… 4
AYES


NOES


Joyce, B.  Kemp, C.R.  
Lightfoot, P.R.  Macdonald, I.  
Macdonald, J.A.L.  Mason, B.J.  
Nash, F.  Parry, S.  
Patterson, K.C.  Payne, M.A.  
Ronaldson, M.  Santoro, S.  
Scullion, N.G.  Troeth, J.M.  
Trood, R.  

PAIRS

Hutchins, S.P.  Watson, J.O.W.  
Milne, C.  Vanstone, A.E.  
Ray, R.F.  Ferris, J.M.  

* denotes teller

Question negatived.

Senator FIELDING (Victoria—Leader of the Family First Party) (2.40 pm)—I move amendment (4) on sheet 4744 revised: (4) Schedule 1, item 71, page 177 (line 30), at the end of paragraph 101B(1)(b), add “provided that the provisions in the agreement concerning penalty rates, loadings for working overtime or for shift work, and rest breaks, must be comparable to the relevant awards”.

This amendment is in respect of overtime, penalty rates and shiftwork allowances. This is an important issue. It is probably worth going back to the original reason why overtime and penalty rates were introduced many decades ago. The issue is that they were part of the first paid work and family initiative. They were designed to act as a disincentive for employers to request their employees to work antisocial, long hours. We know that today these issues are also being used for purposes other than the original intent. For example, they are used by some to top up low pay and they are also acting as a disincentive for some small businesses. Those two issues themselves do not mean that we should just throw them out, because the original intention of the allowances and penalty rates was to ensure that there was some disincentive in the process so that employees were not requested to work long, antisocial hours and to make sure that working at 2 am was treated differently to working at 2 pm. That is the issue at hand here.

It is a real issue for most Australians who understand that at some stage down the track they may be presented with an individual agreement without those issues and they find out that they will lose eight hours pay a week because the overtime allowances are not there any more. The little luxuries in life, like going to the movies on the weekend or going down to the local pizza parlour could be compromised for some. I understand that for a lot of people this may not be the case, but some, who are in their current position because of awards or because someone has been able to negotiate enterprise bargaining agreements for them to level the playing field, will not be in a position to try to bar-
gain for things like overtime allowances and penalty rates.

Family First’s concern is that, while we understand that overtime and penalty rates are causing some problems, the original intent and purpose of them is still legitimate and they are still needed. Before we throw them out, I think we should make sure we have something in their place. The Family First amendment goes towards making sure that, when agreements are struck, overtime and penalty rates are at least comparable to the awards that otherwise would be in effect.

I think this is more than fair and reasonable. As I said, people are surprised when they find out that eventually these could be taken out and that they have to bargain to get them back. That may work for some. You and I, Madam Temporary Chairman Crossin, may be able to bargain for those things, but a lot of people will not be in that position. So I ask all the senators to think and use their consciences—which they would do in all cases, but I ask them to do so in this case in particular—as to whether it is right that these things will be taken out before we replace them with something else? I say the answer is no, and I encourage senators to vote with me on this issue and vote for the Family First amendment.

Senator WONG (South Australia) (2.46 pm)—Can I indicate the opposition’s attitude to this. This amendment demonstrates one of the agendas at the heart of the government’s bill—that is, the government’s desire to ensure that employees in this country can be required to take a job on the basis that they have no entitlement to overtime, no entitlement to penalty rates, no entitlement to shift allowances and no entitlement to rest breaks. That says, ‘Your hourly rate contemplates all of these things: penalty rates, overtime, shift allowances, et cetera.’ And you do not have to get anything other than the minimum applicable wage. So you give away all the rights and entitlements that Australian employees currently have, and what do you get for it? You get the minimum wage.

I am sure the government will vote against this amendment. This amendment shows the government’s real agenda—that is, to reduce the wages and rights of working Australians. It is quite clear under this legislation that new employees can simply be given an AWA—take it or leave it—removing all rights to overtime, penalty rates, shift allowances and rest breaks. Frankly, I am sure the government has the gall to say that this is about choice and that the Fair Pay Commission is about fair pay, when the government does not want to have any reference to fair minimum wages in the bill.

We think that Senator Fielding’s amendment goes part way in dealing with the issues, and on that basis the opposition will support it. But we are fundamentally opposed to a situation where, under the guise of choice, this government puts in place a set of policies which ensure that Australian workers are no longer guaranteed access to overtime, penalty rates, shift allowances and rest breaks. That is what this legislation does.

I just want to make one point that I think I made briefly yesterday. It is not just new employees—although that is bad enough because I think one in five Australian workers change jobs every year. One in five workers every year can be presented with this AWA removing overtime, penalty rates and shift allowances. If you are under a collective agreement or an AWA, provisions under the government’s legislation allow the
employer to unilaterally terminate the agreement 90 days after the agreement’s technical expiry date. So, at that point, the employer can simply unilaterally terminate an existing collective agreement or an AWA of an employee, even if the agreement talks about a higher rate of pay or additional penalty rates or has some other arrangement in place. All the arrangements can be removed, and the employee falls back to the four minimum standards plus the ordinary hourly rate of pay.

Senator Fielding’s amendment goes some way in trying to insert a modicum of fairness into the government’s bill, but it does not change the character of the legislation, which is that the wage floor in this country will be dropped below the awards to the ordinary hourly rate and the four minimum conditions. That is now the new minimum. That does not include overtime, penalty rates and shift allowances. While we will support Senator Fielding’s amendment, I just want to make it clear: we do not think it goes far enough, because in this country we should have a fair set of minimum wages and conditions that all Australians are entitled to and for which they do not have to beg. Australians should not be put in the position of having to trade those things away for nothing—which is the government’s position—in order to get or keep a job.

Senator Hurley (South Australia) (2.51 pm)—I want to briefly speak again about the problems for new migrants to this country: people who are desperately looking for a job, whose English is very poor and who do not understand the nature of our industrial relations system. I think these people are most vulnerable to signing away their rights to penalties, shift rates and rest breaks, because they simply do not understand that these are—currently, anyway—the norm for workers in Australia.

Migrants coming into this country often go into casual short-term employment. They are already vulnerable to exploitation on those grounds. They often go into areas, initially at least, like fruit picking and taxi driving, which are often high-turnover jobs for which employers are not looking to have long-term loyal employees. Employers probably know that these employees are going to go on to other jobs. But, even if these employees do go on to better jobs, that is no reason that even in the short-term they and their families should be exploited by lower wages and worse conditions than the rest of the work force. I certainly support the Family First amendment on the basis that it might give some relief. I oppose the whole of the government’s legislation, and one basis for that is that I think migrant employees and people with poor English are not adequately protected under the legislation.

Senator Abetz (Tasmania—Special Minister of State) (2.53 pm)—The government opposes the Family First amendment. I understand there are some technical difficulties with it, but I will not bother canvassing those, because even if the technical difficulties were overcome we would not be supporting the detail or sentiment of the amendment. There is within the legislation a 38-hour standard for employees. It was interesting to hear Senator Fielding acknowledge that penalty rates in fact do hinder expansion plans. He acknowledged that—I do not think
I am verballing him. What does hindering expansion plans mean? It means hindering a business from growing. What happens when a business grows? It creates new employment. To paraphrase Frank Crean, a former Treasurer of this country, one man’s pay rise is another man’s job. In the case of Senator Fielding’s example, he is basically saying that those sorts of rates are unfortunately denying other people employment opportunities. That is the corollary of what he is saying.

We specifically do believe that there should be flexibility in the workplace. As I have had opportunity to note on numerous occasions, people like Greg Combet are on the public record about this. He was asked the question by a journalist: have you ever been involved in negotiating away penalty rates? Answer: yes. If the unions can do it because even they can see the sense in it, it seems to me that individuals should be allowed to do it as well. If you are currently under an award with penalty rates, what you have got is what you keep. In relation to new agreements, if you trade away penalty rates it has to be specifically referred to in the agreement, keeping in mind what the basic standards are.

We have heard once again the rhetoric that this is all about reducing wages and doing the worker in the eye. All I ask is for the Australian people to remember the 9½ years of the Howard government, which have seen unemployment plummet. Unemployment has gone right down but it is still not low enough. We have also delivered real wage increases that Labor could have only ever dreamt of, in a time of the lowest rate of industrial disputation ever. I think we have got the employment trifecta pretty well spot-on with those sorts of results.

But there is not too much self-congratulation by the government on this side. We believe we need to go further. We had a bit of to-and-fro just before lunch as to why, if things are going so well, we need to change the system. I used the analogy yesterday that it is like an athlete who is absolutely at his physical peak. He is absolutely fit. Why should he bother training again? Why should he maintain that fitness? The first day he will not notice any difference. Chances are that the first week and the first month he will not notice any deterioration in his performance. But ultimately he will become less competitive. Similarly, with the Australian economy, if we believe the mantra of Mr Beazley that the industrial relations lemon is squeezed dry, that there is no need for reform and that everything that possibly can be done has been done, we are like the foolish athlete that says, ‘I am completely physically fit therefore there is no reason to maintain my fitness regime.’ The economy needs to maintain a reform regime to ensure that those that are currently out of employment are given the opportunity of employment. The last 10 years of reform have seen unemployment plummet from one million to 500,000. We would like to see more reform to drive down that figure even further so that those in this country that are socially and economically repressed have the capacity to engage in the wealth that will be available if we free things up and make it flexible for the benefit of all.

Senator MURRAY (Western Australia) (2.59 pm)—Briefly, it is our belief that Senator Fielding’s amendment makes explicit what should be made explicit in the bill. The Democrats support the amendment.

Senator WONG (South Australia) (2.59 pm)—I will try to be brief because, as I indicated earlier, the opposition want to try to get on to the unfair dismissal provisions which dramatically reduce the rights of Australian workers. I have tried to be brief in my contributions this afternoon in order to facilitate
that debate, but I think some of the misinformation that Senator Abetz has put on the record really needs correcting. It is a tired old tape that the minister keeps running every time the issue of penalty rates is mentioned. He has done it in question time over and over again; it is like he only has one answer and he just puts it in a tape recorder and presses the button. The fact is that, if there are agreements where penalty rates have been negotiated away, they have been done on the basis that workers are not disadvantaged overall. That is for two reasons. One is the statutory no disadvantage test which this government is removing. The second is that, if a union agreement is in place, you are seeking agreement to improve the position of employees.

The agreements where you have had penalty rate negotiations occur in the context of a statutory framework that ensures Australian workers are not disadvantaged overall. That is what the no disadvantage test connected to the awards does. What this government is removing is that test and the pre-eminence of awards as the wage and conditions floor in this country. Let no-one be under the misapprehension that this is business as usual. This is a fundamental change to the way in which entitlements, wages, conditions and rights in this country are regulated. What this government is saying is that these things can be traded away for nothing. That does not exist under the current system. The government is saying: ‘These things can be traded away for nothing because we are removing the no disadvantage test and we are removing awards as the basis on which fairness and disadvantage are assessed.’ The only things against which these issues will be assessed are the four minimum conditions and the minimum hourly rate.

I do not want anyone to be under the misapprehension that what the minister says is correct—that somehow, because penalties have been the subject of negotiation before, this is no different. This is a fundamentally different system. It is a fundamentally different system that does not ensure that workers will not be disadvantaged. I do not want to spend too long having a discussion about economic argument and the rather strange reference to male athletes—I will leave it to the minister’s mind if he wants to focus on athletes—but I want to make this point. It is extraordinary that this government comes into this chamber and says: ‘We have to do this for the economy; we have to be competitive.’ As I said earlier today, it is quite clear that ‘competitive’ means competition in terms of wages and a race to the bottom. That is what competitive means.

This government has turned away 270,000—I think that is the number; I could be wrong—young people from TAFE over the life of this government at a time when we have a massive and significant skills shortage, of which the government has been aware. And yet you come into this chamber and lecture us and, through this chamber, lecture the Australian workers about competitiveness when you are doing so little to ensure that our people, Australians, have the skills that they need to take our economy forward and to ensure productivity growth into this century. What you are saying to Australian workers is: ‘No, we want you to be competitive—that is, we want your wages to drop.’ You talk about disincentives. What you are saying is that you want to remove penalty rates because you want to ensure that the employers get what they want. We know that employers want this because they made this submission to the Senate inquiry. They think penalty rates are a fetter on the system; they are a disincentive. They think they are too high and they want to be able to negotiate them away.

I want to go back to something the Prime Minister said, so that we understand how
long his agenda has been around and exactly what the agenda is. In October 1992, at the launch of the coalition’s IR policy, the Prime Minister, who I think was then the shadow minister for industrial relations, said—and I will quote this because I think it is clear from this what the agenda still is:

I’ve frequently said as I’ve gone around Australia... talking about this policy that if we really want to modernise the Australian economy, if we really want to internationalise the work practices of Australia, if we really want to make the Australian workplace competitive with the rest of the world we have to embrace a very important principle, and that is if somebody makes a capital investment in this country they ought to be able to run that capital investment 24 hours a day, seven days a week, 365 days a year without penalty as to the time of the day or night they run that investment.

It is absolutely clear and on the public record what this legislation is. It is delivering exactly the commitment that the Prime Minister made when he was a shadow minister in relation to the removal of penalty rates.

Senator SIEWERT (Western Australia) (3.04 pm)—I would also like to put on the record our support for the amendments because they do go some way to address some of the glaring holes in this legislation. Business organisations that came before the Senate committee were quite clear, as has already been articulated, in their desire to see minimum wages drop. They were quite clear that it would help their businesses. Let us make no mistake: that is what this is about. We have also heard plenty of evidence to indicate that people do need overtime and penalty rates. They help top up wages for the low paid in this country. Study after study shows the impact that taking away penalty rates and overtime rates will have, particularly on young people and on women.

I will take a little moment to consider that—that is, the issue that women have done better recently. I agree with Senator Murray that these changes will take that away. The evidence in Western Australia is quite clear in relation to what happened in the 1990s. The gender pay gap widened through these types of reforms in the west in the 1990s. This provision will help redress some of those problems in this bill. We support these amendments.

Senator ABETZ (Tasmania—Special Minister of State) (3.06 pm)—What we have from those opposite yet again is the telling of half the story. Is the no disadvantage test being removed? Answer: yes. What is it being replaced by? Legislated minimum standards that have not been in legislation before—legislation such as 10 days personal leave or sick leave, which is a greater amount of sick leave or personal leave than currently exists in some awards. Of course, we have done that on the say-so of the employers, if you listen to the nonsense from those opposite. Can I tell you, there was no business group that I am aware of that told the government: ‘Make sure you ramp up personal leave to 10 days and then make sure it can’t be traded away.’ Which employer group made that suggestion to the government? Not a single one.

You see, we as a government are not beholden to one group within the community. We listen to both sides. Unlike those opposite, who only take the one approach, we can listen to both the workers and the employers and then strike a balance down the middle. Indeed, when we came out with these reforms, the industry groups condemned us for not going far enough and the trade unions condemned us for going too far, which placed us as a government very comfortably in the middle. That is where we still are today.

So when those opposite and the trade union movement tell workers that ‘they have
removed the no disadvantage test’, be honest and tell them that, in exchange, the workers of this country are being guaranteed 10 days personal leave that cannot be traded away. Currently under this much vaunted no disadvantage test, do you know what? Every single sick day can be traded away. We do not think that is good enough. We believe that, for the family unit and for the social structure of our society, that should be kept apart from the negotiating table. Where is the recognition for that on behalf of the workers of Australia? If there was some balance in the views of the ACTU, they would at least say, ‘We’ve got to give the government a tick for that because they have gone even further than what we have been able to achieve.’ But, no, their politics always come before the needs of workers.

What is another thing that we have legislated and protected by law? Currently under this much vaunted no disadvantage test, you can trade away every single day of your annual leave. What sort of quality time can you have—and this is what those opposite allegedly are concerned about—with your family if you can trade away every single day of your annual leave? None. As a result—and it was not because of an employer group lobbying us, I can tell you—we struck a balance in saying: ‘You can only trade away 14 days of your annual leave. The rest will be kept safe and you cannot trade it away.’ That is protected by law.

Do we hear the trade union movement saying: ‘Well done. You’ve really gone further than we have been able to’? No, because no matter what this government does it will never be good enough because we do not adopt the trade union agenda holus-bolus. We accept some of it and we accept some of the employers’, and we go down the middle. I suppose that that is why in this debate, to a certain extent, we do not have all that many friends because we have not delivered for either of the big groups, but we are looking after the vast majority of workers, to whom I referred to earlier in this debate as ‘our mates’, and we are delivering for them.

With regard to this silly argument about the no disadvantage test being knocked out, that is true. But be honest and say that it is being replaced with something else that will guarantee workers’ rights. It is just like the sterile argument we have been having that the word ‘fair’ is being taken out of the principal object of the act; therefore, that shows the government is wanting to be unfair. It is true that we have taken the word ‘fair’ out but be honest and say that the word ‘harmonious’ has, for the first time ever, been put into the principal object of the legislation. If workers hear that they will ask: ‘What’s the difference between fair and harmonious?’ If you want a harmonious workplace, guess what? Chances are you need to have fairness in it to make it harmonious. So each time those opposite rise to make a point that the government has taken something out, I say to the Australian people: do not be deceived; ask the question: what is it being replaced by? When you observe what we are replacing the things with, you will see that it is a very fair and very balanced package.

We were told that there is a skills shortage in this country. Once again, that is quite right; there is a skills shortage in this country. But the Australian workers would prefer a skills shortage, as there is under us, to the huge skills surplus that there was under Labor when one million of our fellow Australians were on the social scrap heap of unemployment. Sure, having a skills shortage is not a good thing for this country but those who delivered this country a skills surplus are hardly in a position to condemn us for having created so many job opportunities in this country that we now suffer a skills shortage. Sure it is something we are working to overcome. We need to overcome it. But take
the tip: if you were to take a poll and ask, ‘Would you prefer the Labor Party’s one million unemployed and a skills surplus or would you prefer a low unemployment rate with a skills shortage?’ I reckon they might go for the lower unemployment rate and the skills shortage.

Senator Siewert says that our amendments are going to help business—I think that that is what she said—as though that is a nasty thing in itself. Just remind me again: who creates jobs?

*Senator Nash interjecting—*

*Senator ABETZ—* Thank you, Senator Nash—business. What a novel idea. So if businesses create jobs and we help businesses, guess what—we might create a bigger employment environment. As a result, more Australians come off unemployment and into employment, which we know is the best social security system that any government can ever deliver. An individual’s own job allows them to maintain and sustain themselves and their family unit. It allows them to engage in the mainstream of society, and that is what we want, that is what we are pursuing.

Once again, our record, the pay packets of Australian workers, speaks so much louder than the propaganda of those from the other side who, for the past 10 years, have been making these allegations against the Howard government, all of which have been proven to be false. They repeat the same mantra, exactly the same words, in relation to these reforms as they did with our past reforms on waterfront, on tax and on industrial relations. All those prophecies of doom have been shown to be false prophecies, so I have every trust and belief that their prophecies of doom on this occasion, in all the same language, will also be shown to be false prophecies.

*Senator MURRAY (Western Australia) (3.15 pm)—* It is getting to a late time of the day and I must be getting a bit silly, because when I listened to that I suddenly thought that perhaps the minister was proposing that the famous Australian fair go principle now become the harmonious go principle, which struck me as odd.

*Senator FIELDING (Victoria—Leader of the Family First Party) (3.16 pm)—* I will remind my fellow senators what this vote is going to be on. It is about whether you actually want to see every Australian still having overtime and penalty rates guaranteed as basically a minimum. The Family First amendment is about making sure that that is there. If people want to trade that away, there have to be some comparable terms. This is very important. This vote is about ensuring that those people who are relying on over-time do not have to try and bargain for it back because their employer can legally take it away.

*Senator ABETZ (Tasmania—Special Minister of State) (3.17 pm)—* I will very briefly respond to Senator Hurley in relation to migrant workers. I finally found the proposed section, 83BB(2). It says that the Office of the Employment Advocate will explain the contents of agreements to employees, taking into account the circumstances of particular employees, including persons from non-English speaking backgrounds and young persons. It says:

In performing his or her functions relating to workplace agreements, the Employment Advocate must encourage parties to agreement-making to take account of the needs of workers in disadvantaged bargaining positions (for example: women, people from a non-English speaking background, young people, apprentices, trainees and outworkers).

*Question put:*

That the amendment (Senator Fielding’s) be agreed to.

The committee divided. [3.22 pm]
(The Chairman—Senator JJ Hogg)

Ayes…………… 34
Noes…………… 36
Majority……… 2

AYES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Campbell, G. *
Carr, K.J. Conroy, S.M.
Crossin, P.M. Evans, C.V.
Faulkner, J.P. Fielding, S.
Forsyth, M.G. Hogg, J.J.
Hurley, A. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. Moore, C.
Murray, A.J.M. Nettle, K.
O’Brien, K.W.K. Polley, H.
Sherry, N.J. Siepert, R.
Stephens, U. Sterle, G.
Stott Despoja, N. Webber, R.
Wong, P.

NOES
Abetz, E. Adams, J.
Adams, J. Boswell, P.L.D.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. * Ellison, C.M.
Ferguson, A.B. Fierravanti-Wells, C.
 Fifield, M.P. Heffernan, W.
Hill, R.M. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Nash, F.
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Sanotoro, S. Scullion, N.G.
Troeth, J.M. Trood, R.

PAIRS
Hutchins, S.P. Watson, J.O.W.
Milne, C. Vanstone, A.E.
Ray, R.F. Ferris, J.M.

* denotes teller

Question negatived.

An incident having occurred in the gallery—

The TEMPORARY CHAIRMAN (Senator Crossin)—Order! I ask the people in the gallery: please sit in silence if you are staying. Order! I repeat: if you are staying, you need to stay in silence and watch in silence.

Senator FIELDING (Victoria—Leader of the Family First Party) (3.27 pm)—I move Family First Party amendment (16) on sheet 4744 revised:

(16) Schedule 1, item 72, page 341 (line 17), at the end of paragraph 170AB(c), add “, provided that any provision in a workplace agreement or industrial agreement is at least comparable to the entitlement provided for in section 170AA”.

The amendment is in regard to guaranteeing meal breaks. It is an important issue but, due to time, I want to keep my remarks fairly simple and straightforward. The bill that we are considering currently has, at 170AB:

An employer must not require an employee to work for more than 5 hours continuously without an unpaid interval of at least 30 minutes for a meal.

But at 170AB, ‘Displacement of entitlement to meal breaks’, it says quite clearly, at paragraph (b), that this does not apply where ‘a workplace agreement’ operates. This means that, all of a sudden, meal breaks are not guaranteed for all Australian workers. The Family First amendment is quite clear. It adds another line that says that the meal break provision does not apply:

… provided that any provision in an award, workplace agreement or industrial agreement is at least comparable to the entitlement provided for

In other words, if someone is going to try to take away the meal break, it has to be comparable in some terms. This is very important from a health and safety point of view. Peo-
ple should not have to work without a meal break, and in Australia we should be guaranteeing that for all workers, not just for some who will eventually be able to bargain for them.

Senator GEORGE CAMPBELL (New South Wales) (3.29 pm)—Can I indicate that the opposition will be supporting the amendment moved by Senator Fielding. But I want to take the opportunity at this point to ask the minister the question that I asked him at estimates which he indicated he would take on board or refer to the department. That was the one about where there is a dispute between an employer and employee—a difference over hours of work or over having a meal break. What provisions are there in the bill to enable that issue to be resolved?

Senator ABETZ (Tasmania—Special Minister of State) (3.30 pm)—I would have to check the Hansard record as to whether that matter was taken up during Senate estimates. The officials do not recall that. But, either way, the question of course stands in its own right. As I understand the situation, the hours of work, meal breaks and whatever will be dealt with under the regime of dispute resolution that is set out in the legislation. I think we canvassed aspects of that during the estimates and also yesterday, I think it may have been. So, unless there is a specific question as a follow-up from that, it would be under the dispute resolution mechanisms of the legislation.

Senator GEORGE CAMPBELL (New South Wales) (3.31 pm)—It was, I can assure you, raised at estimates; Mr Cully was the officer who specifically addressed the issue. The information I was given at estimates was that it would take two weeks to go through the model dispute-settling procedure in order to have the issue resolved. That seemed to be an issue of some conflict, given that you may well have a worker told on a Friday to change their shifts for the following week, yet they cannot resolve any difference they might have with the employer for at least a fortnight. Similarly, with the issue raised by Senator Fielding, if it is a dispute over whether or not a person should have a meal break, it seems incongruous that you would have to wait a fortnight to go through a model dispute-settling procedure in order to have that matter resolved.

Senator ABETZ (Tasmania—Special Minister of State) (3.32 pm)—In relation to the 14-day time period, I understand that was indicated to you in the event that the employee and employer cannot agree on somebody to arbitrate, determine or resolve under the model dispute resolution proceedings. If they cannot agree on a person to undertake that task for them then you move to the next system, and that would possibly take 14 days. In fairness, I am not sure that these matters are necessarily resolved under the current system any more expeditiously. If these sorts of disputes do arise—and one would hope they would not—it would involve the dispute resolution system that is under the act. I do not think there is any evidence or suggestion that the current regime of resolving disputes about meal breaks et cetera would necessarily be any quicker than that which is being proposed. The other thing is that potentially, should somebody be so interested, if somebody were to refuse to work or were required to work, injunctions could be obtained.

Senator GEORGE CAMPBELL (New South Wales) (3.34 pm)—Minister, what do you mean by ‘injunctions could be obtained’? Are you suggesting that if there is a dispute over a meal break a worker should take the issue to court?

Senator ABETZ (Tasmania—Special Minister of State) (3.35 pm)—You go to the Federal Court for injunctions under the dis-
pute resolution mechanism, which on my advice is just as timely as it currently is under the present regime. So, whilst there might be some mirth in the gallery, that is the way it is and not much will change in relation to that. So, if there is a dispute about hours and length of hours et cetera, that is ultimately the place where that would end up.

Senator GEORGE CAMPBELL (New South Wales) (3.36 pm)—Minister, if I read you correctly, what you are saying is that, if I have a dispute with my employer about what shift arrangements I should work next week, what change of shifts I should be engaged in next week or whether or not I should have a meal break, my only remedy to resolve that would be to take an action in the Federal Court and presumably bear the expenses and legal costs of pursuing that action.

Senator ABETZ (Tasmania—Special Minister of State) (3.36 pm)—If it were to escalate to that level, a workplace inspector could take that matter on for you. That position is taxpayer funded. One would hope these matters would be resolved without the need for dispute resolution in that sort of forum but, if it does escalate to that situation, it begs the question: what happens now if there is a dispute about hours et cetera and the employer and employee cannot work it out? Where does it go? How long does it take? Whilst we will be having different regimes, nobody has asserted that this method that we are suggesting will take longer than the current system does. I know why they do not make that assertion—that is, because it will not be.

Senator GEORGE CAMPBELL (New South Wales) (3.37 pm)—Minister, I enlighten you to the fact that you will find that most awards provide for a time period within which a person might have to change shifts. In other words, there is a period of notice before people have to engage in shift changes. I have one final question with respect to this matter. If I have a dispute with my employer today about whether or not I should change shifts on Monday and I refuse to change that shift pending the settlement of the dispute, can I be terminated for refusing to change that shift? And, if I am terminated, what form of redress do I have?

Senator ABETZ (Tasmania—Special Minister of State) (3.38 pm)—I understand that Senator Marshall might have a question on another matter. Can we interpose whilst we are getting Senator Campbell’s information just to save time? We have provided some written answers to Senator Marshall, which I suggest for the sake of time we might be able to incorporate at this stage.

Senator MARSHALL (Victoria) (3.39 pm)—Thank you for the indulgence of the chamber. Last night, we were discussing some issues in relation to outworkers. I want to put on record my thanks to the minister and, indeed, all other senators in the chamber for the very cooperative way in which we have dealt with this particular issue. I also extend my appreciation to the departmental officers for their assistance overnight and again today in resolving some of these matters.

I understand the minister has a document to table, and I support that. I simply ask him in requesting the tabling of that document to reconfirm Mr Pratt’s advice from DEWR where he said in the committee inquiry:

But I can reiterate the message I was giving before, and that is that the unique provisions that currently provide special protections for outworkers are going to be retained in the new system. What is there now will be retained in the new system. That is the policy intention, and we will be working to ensure the bill provides for that.

He then went on to say:
Our intention is to ensure that the government’s policy that the unique protections which currently exist for outworkers continue under the new system.

I ask the minister to simply confirm that that is still the government policy intention.

Senator ABETZ (Tasmania—Special Minister of State) (3.41 pm)—I thank Senator Marshall for his approach to this issue. There were a number of issues that he raised by question and then was able to put them in writing. We now have a written response. Those written responses confirm that which Mr Finn told—

Senator Marshall—Mr Pratt.

Senator ABETZ—Sorry, I think Finn is his Christian name. My apologies to Mr Pratt. You get too familiar in this game, don’t you? I thank Senator Marshall for the way that he has conducted himself in relation to this issue. Now the only issue is whether you seek to incorporate the answers.

Senator MARSHALL (Victoria) (3.42 pm)—I seek leave to incorporate the answers provided by the minister into Hansard.

Leave granted.

The document read as follows—

Concern that s.100B would enable an employer to avoid obligations under outworker terms in an award if the employer entered into an AWA with each of its employees.

S.100B provides that an award has no effect in relation to an employee while a workplace agreement operated in relation to the employee. This section replicates ss.170VQ(1) in the Workplace Relations Act 1996.

As the outworker terms in an award, for example in the Clothing Trades Award 1999, govern the relationship between the employer and those parties to whom work is given out to third parties not employed by the employer, the rule in s. 1006 does not apply with the result that the outworker terms would continue to apply to the employer.

If the employer enters into a workplace agreement with its employees (including outworker employees), the employer cannot contract out of the outworker terms in the award, which includes the provisions that enable the union to monitor the production chain.

Awards that currently bend both employers and non-employing entities will continue to bind those employers and non-employing entities after reform commencements.

Item 4 in Schedule 4 and Clause 4 of Schedule 13 provide for the operation of existing awards in the new system along with the transitional system for non-constitutional entities bound by federal awards.

Government amendments are proposed to ensure, in particular, that non-employing entities currently bound by federal awards that contain outworker terms will continue to be so bound.

See Government amendments

- Schedule 4—Items 324-333
- Clause 4 in Schedule 13—Items 227-233

Standing for an organisation such as the TCFUA to bring an action for a penalty or other remedy for a breach of an outworker term in an award.

Government amendment 188 amends ss.177AA(1) to enable a person (which under ss.4(1) includes an organisation) to have standing to make such an application.

Under s.177AA(1) and (3) of the Bill, an organisation will have standing in relation to breaches of a collective agreement where a member of the organisation is employed by the employer that is bound by the award.

Right of Entry

Concern that the Bill will prevent the TCFUA from investigating suspected breached of the Clothing Trades Award 1999 or other awards that contain outworker terms.

The Bill will not prevent an organisation, including the TCFUA, from exercising rights to enter premises under:

- State outworker legislation,
- Voluntary codes that operate in the industry
- Under specific award provisions such as Clause 46.2.5 of the Clothing Trades Award.
1999 that provides that within 2 working days of a request being made, the employer’s work records created in accordance with the Award must be provided to the union for inspection and copying.

Protection of State Outworker legislation

Government amendment 16 has the effect of specifically excluding matter relating to outworkers (including entry of a representative of a union to premises for a purpose connected with outworkers) from the operation of the ‘covering the field’ provisions in s.7C of the Bill.

Protection of specific State Award outworker protections

Under Schedule 15 of the Bill, State awards that will operate in the Federal system will become a notional agreement preserving state awards. Outworker conditions in these instruments will be protected as ‘protected notional conditions’.

The outworker conditions will have the same protection as with workplace agreements, including the prohibition on an employer and employee excluding the operation of these conditions under workplace agreements.

Senator MURRAY (Western Australia) (3.42 pm)—Whilst we have a break, I wonder if I could seek leave to have a procedural matter resolved. I can see that we are going to come up hard against the 4.30 pm guillotine time. The government amendments, along with everybody else’s amendments, will then be put sequentially at that time. I understand that process. The government amendments are accompanied by a supplementary explanatory memorandum. I have notes to my amendments and my request to the chamber is that I be allowed to incorporate those notes for those amendments which are dealt with at the 4.30 pm cut-off time.

Leave granted.

The document read as follows—

Hours worked—Items 21, 22, 23, 24, 25, 26, 57A

Because the Government have chosen to undermine the award system and only mandate 5 minimum standards as and conditions, the issue of working hours has become a contentious one. Awards have in them protections that prevent unreasonable hours being made of an employee i.e. when workers can be rostered, number of hours you can work in a single day or shift, if there are split shifts certain amount of break, and casuals can’t come in for only 1 hours. This Bill will sweep away protections and will only leave a bear figure for number of hours worked.

I note that the Government in their 98 pages of amendments have attempted to address this situation, but I note that there will still be a capacity to make agreements which average hours over a period of time which will permit considerable flexibility for employers.

There remains no general protection against being asked to work to unreasonable hours…. Protection only cut in under the Bill when we move into additional hours. It doesn’t address reality of employees being asked to work too many hours in a day to few or being called in for multiple shifts.

Democrats items 21, 22, 24, 25, 26 will prevent workers being asked to work unreasonable hours.

The critical provision is at item 26 which attempts to amend subdivision B 91C by outlining what is meant by unreasonable hours

Unreasonable hours

(6) An employee must not be requested or required by an employer to work unreasonable hours, whether as additional hours or otherwise.

(7) For the purpose of subsection (6), the factors to be taken into account in determining whether hours are unreasonable include:

(a) any risk to the employee’s, other employees, customers or clients health and safety; and

Note: For purposes of this paragraph, an example is where truck drivers or doctors in hospitals are given unreasonable hours that endanger the health and safety of others.

(b) the employee’s personal circumstances (including family responsibilities); and
(c) any notice given by the employer of the requirement or request to work the hours in question.

Note: For example, hours may be unreasonable because the employee is asked to work excessively long hours, or an unreasonably short shift, or shifts broken by an unreasonably short period, or at unreasonably short notice.

Our Item 23 also attempts to reduce the employee’s applicable averaging period to one month or such a longer period as is agreed to in writing between the employee and employer.

Finally item 57A takes out of the non-allowable award matters (e) the maximum or minimum number of hours for regular part time workers.

**Annual leave—27**

Most awards provide for some leave to be taken in a block, they vary but some preserve the weeks, some 2 weeks, and some say leave can be taken in a maximum of 3 periods. Until this year the maximum number of days that could be taken as single days in the overwhelming majority of awards was 5.

In the Family Provisions Test Case the AIRC rejected an application by ACCI to allow all annual leave to be taken in single days, saying that some leave should be preserved for rest and recreation. The Commission increased the number for single days from 5 days to 10 days.

**Discrimination—28, 30, 49**

Items 28 and 30—deals with discrimination in the Bill of same sex couples with respect to personal leave and parental leave. This issue was raised by a number of submissions to the inquiry into this Bill including the Human Rights and Equal Opportunity Commission. They noted that some state regimes had such provisions. The Government continues to refuse to recognise same sex couples in law, except I note in the anti-terrorism legislation. The Democrat amendments simply delete the words opposite sex from the definition of defector spouse.

Item 49—deals with prohibited matters in agreements. This has been a contentious issue—what should be in an agreement between and employee and an employer—To date the courts have generally determined this issue. Division 7 Subdivision B of the Bill, among other things, gives the minister the power through regulation to intervene in the content of agreements. I note that the power to intervene in agreement making goes against the governments stated objective, and all principles of contract law, that the parties should be free to reach agreements that meet their need, subject only to proper minimum standards.

The Democrats amendment deletes this Subdivision and replaces it with minimum standards that relate to discrimination.

The amendment states that:

(1) An agreement must not contain terms that discriminate against an employee, whose employment will be subject to the agreement, because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

(2) For the purposes of subsection (1), a provision of an agreement does not discriminate against an employee merely because:

(a) it provides for a junior rate of pay; or

(b) it provides:

(i) for a rate of pay worked out by applying (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or

(ii) for different rates of pay for adult and non-adult employees participating in an apprenticeship, cadetship or other similar work-based training arrangement; or

(c) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or

(d) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed.
The employer must ensure that the workplace agreement does not include any provisions that prohibit or restrict disclosure of details of the agreement by either party to another person.

**Work and family—31, 32, 33, 34, 35, 36, 37, 37A**

By leave I would like to split the grouping and move 31, 32, 33, 34, 35, 36, as 1 group and then move 37 on its own, and then 37A on its own.

**Group 1—31, 32, 33, 34, 35, 36**

The Democrats believe that women and employees trying to balance work and family will be hardest hit by the Governments proposed industrial relations changes.

Workers with family responsibilities need job security; predictable common family time; protection from excessive hours; and, flexibility. Yet Australia already lags behind other countries on several of these measures, including working hours and policies to assist employees to juggle their work and family lives. Evidence for the inquiry suggest that the Work Choices Bill will exacerbate this.

Because many women are in and out of the workforce because of caring responsibilities their bargaining power is often reduced as a result.

HREOC argued that family friendly arrangements are more likely offered to better trained and highly skilled employees and therefore regulation of family friendly measures was important to ensure all employees have access to the provisions:

The recent work and family test case granted the right to request:

- The right for employees to request up to 24 months unpaid parental leave after the birth of a child, representing a doubling of the current 12 month entitlement.
- The right for employees to request part-time work on their return to work from parental leave and before their children are at school.
- The right for employees to request to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks.
- A new Personal Leave entitlement which allows up to ten days of paid leave a year for the purpose of caring for family members or for family emergencies—double the former five day provision.
- A new right for all employees, including casuals, to take up to two days unpaid leave for family emergencies on each occasion such an emergency should arise.
- A duty on employers to not unreasonably refuse an employee’s request for extended parental leave or return to work part-time.

However these rights are not part of the 5 minimum conditions and standards. The Democrats amendments 31, 32, 33, 34, 35, 36, attempt to enshrine these entitlements in the legislation, as was recommended by HREOC.

**Item 37**—Not surprisingly the government have not supported the Democrats attempts to enshrine in legislation work and family rights. Democrats amendment Item 37 makes another attempt to assist families by instead of enshrining certain work and family provisions in law, this item puts in law a right to request, which is what the AIRC granted in the work and family test case.

**New Subdivision JA Parental leave variations and employment contact**

94ZZAA Right to request variations

(1) In this section:

- parental leave means any of the following:
  - (a) maternity leave; or
  - (b) paid leave under sub-paragraph 94F(2)(b)(i) or (ii); or
  - (c) paternity leave; or
  - (d) pre-adoption leave; or
  - (e) adoption leave.

(2) An employee entitled to parental leave pursuant to the provisions of this Division may request the employer to allow the employee:

- (a) to extend the period of simultaneous unpaid maternity leave, paternity leave or
adoption leave up to a maximum of 8 weeks;
(b) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
(c) to return from a period of parental leave on a part-time basis until the child reaches school age;
to assist the employee in reconciling work and parental responsibilities.

(3) The employer shall consider the request having regard to the employee’s circumstances and, provided the request is genuinely based on the employee’s parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer’s business.

Note: The grounds for refusal might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

In the Democrats opinion this is not an onerous provision, and yet would be an important right for workers with family responsibilities, especially for those with no or limited bargaining power.

Item 37A—In new Subdivision JA—Parental leave variations and employment contract.

The final item in this grouping is Item 37A which is about ensuring businesses properly inform parents on parental leave about significant changes in the workplace, particularly if these changes could impact on the parents timing and capacity to return to work. Specifically the item says that

(1) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

(2) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

(3) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

(4) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee’s decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(5) The employee shall also notify the employer of changes of address or other contact details which might affect the employer’s capacity to comply with (1).

Safety net/No disadvantage test—40, 41, 42, 43, 44, 45, 46, 47 (no disadvantage test), 51, 52,

In the Democrats opinion the most offensive aspect of this Bill is the Government’s deliberate attack on the safety net that has been built up over more than 100 years of industrial law.

The Democrats believe that as a result of the dismantling of the safety net the Bill will have a detrimental impact on vulnerable or disadvantaged employees and jobseekers and that rather than fair, this Bill is profoundly unfair.

I will start will Item 47. This amendment will re-insert the no disadvantage test as the safety net for bargaining. The Democrats believe that one of the worst proposed changes in the Bill is the abolition of the no disadvantage test, which the Democrats insisted be put in when negotiating the 1996 Workplace Relations Act.

The Work Choices Bill reduces the safety net in three major ways—by severing the connection between agreements and awards over time, by reducing the conditions that agreements reference to from at least 20 (more in the state systems) to 5, and by removing the no disadvantage test. The Bill replaces the no disadvantage test based on the award system which has 20 allowable matters, with five minimum conditions.

The abolition of the no disadvantage test undermines the Democrats support for AWAs. As all in the Chamber know the Democrats supported the introduction of AWAs in 1996, but we only did so at the insistence that a no disadvantage test
based on awards would underpin and would serve to protect workers.

Many submission expressed concerns that certain award matters were being excluded. In particular
Loadings for working overtime or shift work;
Public holidays;
Annual leave loadings; and
These provision affect the overall take home pay of many workers
This amendment will delete 101B of the Bill and re-insert the no disadvantage test as the safety net for bargaining, underpinned by the award system. It will ensure employees cannot lose take home pay. The amendment allows for where there is no relevant award the OEA can designate an award.

101B No Disadvantage test

(1) In this section

designated award, in relation to a person to whom an agreement will apply, means an award that the Employment Advocate or the Commission has determined under subsection (5) to be appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

relevant award, in relation to a person to whom an agreement will apply, means an award:

(a) regulating any term or condition of employment of persons engaged in the same kind of work as that of the person under the agreement; and

(b) that, immediately before the initial day of the agreement, is binding on the person’s employer.

(2) A workplace agreement must not disadvantage employees in relation to their terms and conditions of employment.

(3) An agreement disadvantages employees in relation to their terms and conditions of employment only if its operation would result, on balance, in a reduction in the overall terms and conditions of employment of those employees under:

(a) relevant awards or designated awards; and

(b) any law of the Commonwealth, or of a State or Territory, that the Employment Advocate or the Commission (as the case may be) considers relevant.

(4) If:

(a) an employer proposes to make a workplace agreement with a person; and

(b) there is no relevant award in relation to the person;

the employer must apply in writing to the Employment Advocate for the making of a determination under subsection (2).

(5) Upon application, the Employment Advocate must determine, and inform the employer in writing, that an award or awards are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

(6) For the purposes of subsection (4), the Employment Advocate must determine:

(a) an award or awards under this Act regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the agreement; or

(b) if the Employment Advocate is satisfied that there is no such award under this Act—a State award or State awards regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the agreement.

Item 51 is an important amendment because it amends the Bill to enable the award to be the default if an employer terminates an agreement. This Item is particularly important given that this Bill will enable employers, if they choose, to easily revert to the 5 minimum standards and conditions.

Items 42 and 43 will oblige the OEA to scrutinise agreements to ensure genuine consent (i.e. that the employees have agreed) and ensure the agreement meets the minimum standards, including the no disadvantage test inserted in item 47. The amendment doesn’t prevent the agreement coming into operation even if it breaches the no
disadvantage test, but does provide that any short-fall must be made up. It is not dissimilar to the existing arrangement for new starters on AWAs.

Item 40 aims to place all workers representatives on an equal footing. The Bill provides that a bargaining agent representing an employee in an AWA must be recognised by the employer, whereas a bargaining agent representing employees in an employee collective agreement must be given the opportunity to meet and confer.

There is no obligation in relation to unions seeking to represent members. This proposed amendment would provide that any properly authorised representative must be recognised.

To ensure a union is authorised the amendment provides for two avenues. The employer can voluntarily recognise the union (that has 1 member and coverage) or the employer can give the employees the opportunity to decide.

The amendment borrows from the Bill in that the threshold for triggering a test of the representative nature of the union is the same threshold proposed to trigger a test is the threshold that triggers a pre strike ballot The amendment also borrows from the Bill in that the method of testing whether the union has the support of the majority of employees is the same as is used to test whether a collective agreement is supported by the employees to be covered by it.

The amendment is similar to the regime in the UK, and not dissimilar to the USA and Canada. It doesn’t compel and employer to reach a collective agreement, but does prohibit an employer form refusing to recognised a union once the union is authorised by a majority of employees.

Item 44 and 45 also aim to put all agreements on an equal footing. Under ILO C 98 there is an obligation to promote collective bargaining. However this Bill promotes AWAs, by permitting these to override collective agreements at any time. This amendment would place all agreements on an equal footing, and therefore reaffirms the governments stated view that it is neutral on the type of agreement.

Item 46 simply re-inserts the current requirement that all workplace agreements include anti-discrimination provisions, as part of dispute settlement procedures.

Item 41 will ensure the information provided to employees takes into account their literacy etc. Employers are currently obliged to do this and this amendment will simply retain an existing obligation. In light of the ability of employees to waive ready access, this is simple equity measure.

Given that it is unlikely that the Government will support our amendment to reinstate the no-disadvantage test, Democrat amendment 52 aims to protect vulnerable and disadvantage workers and jobseekers who have no or little bargaining power, by legislating that if an employer requires the employee to make an AWA with the employer as a condition of employment, this is considered duress!

**Agreement making/genuine bargaining—39, 48, 50, 53, 54, 70, 71**

This group of amendments attempt to again take the edge off this Bill, to omit some of the more offensive provisions with respect to agreement making, and ensure that bargaining is actually done in good faith.

Item 48—This amendment simply allows employees and employers to incorporate award or agreement terms into a new agreement. This is consistent with current practice. It will promote less formal bargaining between the parties at the workplace, which otherwise, because agreements oust the operation of the awards, will be more legalistic and formal, as parties need to make comprehensive agreements.

Item 39 deletes the Government’s 96C that allows employers to make an agreement with themselves. Obviously the word is a tautology because it is hardly an agreement if it is made with yourself. This is absolute nonsense. Evidence to the inquiry into this Bill suggested that this provision could also be used by employers who want to escape their current agreement arrangements. They could do this by restructuring or starting a new business, and establishing a new employer Greenfield agreement.

Item 50 opposes section 103L of the Bill that permits unilateral termination of agreements after 90 days. Upon termination employees’ conditions will revert to the 5 minimum conditions and standards. Our item 51 previously moved would have at least meant that the default would have been
the award. This provision hands the employer significant bargaining power. I note that the Government are amending this provision to make it clear that the notice of termination of an agreement can only be given after the nominal expiry date for unilateral termination on 90 days notice. This is a slight improvement, but does not ameliorate in anyway that this provision gives the employer significant bargaining power.

Item 53 simply inserts in 150D of the Bill 2 clauses that provide civil penalties for failure to recognise authorised union.

Item 54 amends slightly the Government’s provisions to exclude pattern bargaining. I just want to say briefly that we do not believe that enterprise bargaining is necessarily at odds with industry-wide or sector-wide negotiations. Awards specifically require a federal or statewide view to be taken. In our view, public sector wages and conditions for professions like nursing generally benefit from commonality. Sector-wide collective agreements and enterprise collective agreements are not mutually exclusive, and nor are multi-employer site or sector agreements necessarily at odds with efficient and effective industrial outcomes. In some cases, both employers and employees see benefits in having an industry or sectoral standard in mind as they approach bargaining at an enterprise level. Indeed, the federal government itself bargains in a whole-of-government manner in the context of their ‘Policy Parameters’ that shape bargaining in the public sector and give it a comparable character across different government agencies.

The amendment does 2 things, it importantly inserts exemption into pattern bargaining if workers are seeking equal pay for work of equal value and it reverses the burden of proof that pattern bargaining is occurring.

Items 70-71 aim to insert a provision that requires employers and employees to bargain in good faith. We have moved these amendments several times before but to no avail.

What do we mean by bargaining in good faith? It means that there is a requirement employer and employees or negotiating parties genuinely try to reach an agreement.

Bargaining in good faith includes:

(a) agreeing to meet face-to-face at reasonable times proposed by another party;
(b) attending meetings that the party has agreed to attend;
(c) complying with negotiating procedures agreed to by the parties;
(d) disclosing relevant information, subject to appropriate undertakings as to confidentiality, for the purposes of negotiations;
(e) stating a position on matters at issue, and explaining that position;
(f) considering and responding to proposals made by another negotiating party;
(g) adhering to commitments given to another negotiating party or parties in respect of meetings and responses to matters raised during negotiations;
(h) dedicating sufficient resources and personnel to ensure genuine bargaining;
(i) not capriciously adding or withdrawing items for negotiation;
(j) not refusing or failing to negotiate with one or more of the parties;
(k) in or in connection with the negotiations, not refusing or failing to negotiate with a person who is entitled under this Part to represent an employee, or with a person who is a representative chosen by a negotiating party to represent it in the negotiations;
(l) in or in connection with the negotiations, not bargaining with, attempting to bargain with, or making offers to persons other than another negotiating party, about matters which are the subject of the negotiations;
(m) any other matters which the Commission considers relevant.

Secret Ballots—55

The Secret Ballot provision in this bill requires the conduct of a secret ballot by employees as a prerequisite for authorisation from the Industrial Relations Commission to take protected industrial action during enterprise bargaining negotiations. This has been a long-term policy objective of the coalition and I think it is the fourth attempt to implement this or similar provisions. If intro-
duced in this form, it will actually make the system more rigid and less effective than the system that we currently have. Although I suspect this is the Government’s aim, to prevent protected action from being taken. The only precedent for this sort of law was in Western Australia. It caused immense union and political heat, it shed very little light and no beneficial outcome ever occurred. In fact, the act ended up being a dinosaur and its demise was welcomed by employers and employees alike.

The Democrats’ policy recognises the legitimate role of unions in protecting the interests of workers who wish to be represented by them and in moving to improve the internal democracy and accountability of unions. We believe that the Industrial Relations Commission should have sufficient powers to end industrial action and to resolve underlying issues by arbitration. We have always supported the democratic protections afforded by secret balloting processes but there is no empirical or credible evidence that an industry-wide set of somewhat complex rules such as those that are being proposed is justified.

When similar secret ballot provisions were before us in September 2002 I said that at the committee hearing I discovered to my great surprise that most unions do not have in their own rules secret ballot provisions for industrial action. I think that is a great omission; it is a great shame. Missing from the IR scene, therefore, is a means for union members to ask for a secret ballot to be conducted by the union at their members’ request. The unions that were selected to appear at the hearing, which included the AMWU, said that they had absolutely no objection to secret ballot processes by a union for their union members, so axiomatically that would mean that any legislation introducing a requirement that unions should have in their rules secret ballot provisions which they would voluntarily use at what they regarded as the appropriate time would be a step forward in the proper functioning of unions in these areas.

The Democrat amendment seeks to delete the Government’s secret ballot provision and replace it with a secret ballot rule provision for unions.

This secret ballots proposal represents a new approach that would achieve internal union democracy and decision making rather than impose additional external hurdles to accessing protected industrial action. Under this proposal, union rules would be able to provide for a secret ballot of eligible members as part of the process for authorising protected industrial action when required, and when required by members. The members would only activate the secret ballot on request; it would not be mandated. By the way, it is not as if we have put up a great hurdle for this to happen; we have suggested that two members may be sufficient to activate the union rules approach.

Aside from the very minimal requirements necessary to ensure fairness and accountability in the ballot, unions would be free to determine the form of secret ballot that best suited their circumstances. There would be no prescription in relation to the method of secret ballot—attendance or postal—or calling for the ballot or the ballot question. In other words, it is up to the unions to devise what best suits them. The result is a simple requirement that will strengthen internal union decision making without mandating, limiting or delaying access to protected industrial action. On request, protected industrial action could be endorsed by secret ballot of members eligible to participate in the industrial action conducted in accordance with the rules of the union. The minimum procedural requirements for a secret ballot to authorise protective action would be that the union must advise members before the ballot as to the matters that are proposed to be dealt with, and the general nature of the proposed industrial action—for example, whether there are to be strikes, bans or both—and notify members and the employer that a ballot has been conducted, along with the result of the ballot.

These simple procedural requirements are intended to ensure that members have a reasonable opportunity to participate in the vote, to understand the industrial action they are being asked to endorse and to be informed of the result of the ballot. These requirements should be able to be easily integrated into unions’ existing practices for approving industrial action. For example, I understand that most unions currently provide some notice to members of any meeting that may consider industrial action. There would be no prescribed quorum, although unions could choose...
to set a quorum through their rules. Each secret ballot should be able to authorise protected industrial action for a reasonable period. To ensure certainty in relation to access to protected action, a ballot would be valid in spite of any technical breaches in processes that were done in good faith. This measure implements the policy achieved by privative clauses—a clause which prevents review in the current bill—which limit challenges in the courts to the ballot process and ballot result on technical grounds. Members would, of course, have the right to challenge any material breach of the rules, but provided the breach was technical and was done in good faith it would not jeopardise the protected status of the industrial action.

Unions would be required to modify their rules to provide for secret ballots to authorise industrial action within nine months of the bill being passed. To assist in this regard model rules would be developed. That is an important point: model rules would be developed in the absence of rules by the unions—in other words, by an industrial relations commission but with submissions that unions in whole or in part could adopt. Any union that failed to introduce the required rules in the prescribed period would be obliged to adopt the industrial relations commission model rules.

Unfair dismissal—58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

I seek leave to split the grouping and move them separately

Group 1 items 58, 67 and 63
Group 2 items 61 and 62
Group 3 items 59, 64, 68
Group 4 items 60, 65, 66

Group 1 items 58, 67 and 63—Delete UFD and related provisions and substitute with vexatious and frivolous provision

The exemption of employers with less than 100 employees from unfair dismissal laws, coupled with the loss of the no disadvantage test and push towards individual agreements will further exacerbate the situation for disadvantaged employees and jobseekers.

The Government has on 12 occasions attempted to amend the 1996 Act or related regulations to exempt all employees in workplaces of less than 20 employees from unfair dismissal rights. Now they have Arbitrarily increased the number to 100.

The Democrats have, on human right grounds, opposed unfair dismissal provisions so many times in this chamber I am losing count. There is absolutely no evidence that exempting unfair dismissal laws will increase employment.

We have over 10 million employed, 1.7 million jobs have been created this decade, and there are only 15,000 unfair dismissal applications under the state and federal unfair dismissal regimes. Those 15,000 would be reduced by a third if lax state systems were replaced by the tight federal system.

The most comprehensive research undertaken to date by Senior Lecturer Paul Oslington and PhD student Benoit Freyens at the University of NSW School of Business found that ending unfair dismissal laws for employers with fewer than 100 employees would create only 6,000 jobs, not the 77,000 claimed by the Howard Government.

The experiment under Queensland State laws, when the then Coalition government introduced an exemption for small business, had no effect on job creation.

In the 2001 Hamzy case the expert witness for the Federal Government, Professor Mark Wooden, agreed with the statement that “the existence or non-existence of unfair dismissal legislation has very little to do with the growth of employment and that it is dictated by economic factors.”

We acknowledge that there have been concerns that employers, especially small business employers pay “go away” money for cases that are frivolous and vexatious, because the cost (time and money) of going to the commission is potentially greater than the “go away” money. The Democrats are not opposed to the Commission therefore having vexatious and frivolous claims dealt with on paper. This is far superior than taking away employees rights to challenge their dismissal.

The Democrats amendments therefore oppose the unfair dismissal provisions and insert vexatious and frivolous provisions in its place.
Group 2 items 61 and 62—restructuring to avoid unfair dismissal

Given that we just failed in our attempt to delete all the provisions relating to unfair dismissal and termination, we will now try to ameliorate the worst aspects of these provisions.

There has been concern that large businesses may benefit from the exemption simply by dividing their workforces between related entities who each engage less than 100 employees.

Democrats amendments 61 and 62 address this issue by treating multiple employer sites as one site.

The amendment does this by stating that employers are taken to be related if:

(i) they carry on a business, project or undertaking as a joint venture or common enterprise;
(ii) they are related corporations within the meaning of the Corporations Act 2001; or
(iii) one supplies labour for use in the other’s business or undertaking, other than as part of a business of supplying labour to employers generally.

I note the Government have a similar amendment at item 164 on sheet PN271, however this amendment fails for 2 reasons. Firstly because it refers only to the corporations Act it will not cover un-incorporated companies in Victoria and the Territories that are covered by this act and secondly it will not cover companies that restructure through partnerships, joint ventures, projects, or as labor supply.

Our amendment captures all those groups.

Group 3 items 59, 64, 68—termination for operation reasons restoring current Act

There has been a lot of concern raised about the Bills new provisions relating to termination for operational reasons. The concern being that these provisions will enable firms of 100 employees or more use the new operational provisions to dismiss employees. We have heard several times professor Petz now famous chewing gum analogy, but I will repeat it here again to make the point

If you are a firm with fewer than 100 employees, then you can be sacked for any reason whatsoever unless it is an unlawful termination.

Unlawful termination relates to discrimination. Chewing gum is not a discriminatory reason covered by the unlawful termination provisions. Therefore, if you are in a firm with fewer than 100 employees, you could be sacked for chewing gum. I am not saying that an employer would sack you for chewing gum; I am saying what is possible. In firms with more than 100 employees—where operational reasons apply—if you are precluded from making a claim because of what the bill defines as operational reasons, then it does not matter what other aspects of your dismissal were relevant to your dismissal. You cannot make a claim. So if the employer is able to create a situation in which you are covered by economic, structural, technical or similar reasons for dismissal as part of the reason for dismissal, then you can be dismissed.

The Australian Federation of Disability organisations also raised concerns about the effect of the provisions on people with disabilities, who could be more easily dismissed on the basis of ‘operational requirements’. AFDO expressed concerned at that employers’ ability to use “operational requirements” as a cover-all for dismissal may lead to a sharp increase in the dismissal of people with disability, particularly those who acquire their impairment while in the workforce.

The Democrat amendments 59, 64, and 68 deleted the offence provisions and would restore the status quo.

Group 4 items 60, 65, 66—termination for operation reasons—(take out “includes”)

Given that the Government did not support Democrat amendments 59, 64, and 68, I will now move items 60, 65, and 66 leaves the provisions in the Bill, but attempt to knock off the most offending bit.

These amendments in three places omit “employee’s employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons”, substitute “employee was made redundant for genuine operational reasons”.

The term “redundancy” has a well-understood connotation, most famously captured by Chief Justice Bray of the SA Supreme Court. He said that redundancy occurs “because the employer no
longer wishes the job the employee has been doing to be done by anyone”. This is distinguished from a dismissal for reasons which are entirely personal to the worker, and where the worker is replaced by someone else in the same job.

The insertion of the term “redundant” then is meant to confirm what I believe to have been the original intent behind the phrase “genuine operational reasons” and its associated definition, that is, to cover situations where an employer decides to get rid of a position, and as a consequence dismisses (“makes redundant”) the employee in that position.

What this would eliminate is the possibility of an employer seeking to rely on a broad interpretation of the “operational reasons” exemption to cover any type of dismissal, including one which is nothing to do with redundancy but entirely personal to the worker. An employer might, for instance, have dismissed a worker for allegedly poor performance and then replaced them. They could argue that one reason for the dismissal was that the worker was not as productive as they might have been, that this was impacting on the performance of the business, and hence constituted an “economic” reason. If the “operational reasons” exemption were interpreted that broadly, every dismissal could be brought within it.

Dispute resolution procedure—69

As outlined in the ACTU submission to the inquiry into this Bill the proposed Part VII provides for how disputes are handled. It provides that disputes about the application of the Australian Fair Pay and Conditions Standard; the application of awards; the application of agreements where the agreement doesn’t otherwise provide; workplace determinations; and some of the minimum entitlements in Part VIA (meal breaks and parental leave) cannot be referred to arbitration. The AIRC cannot compel a person to do anything; arbitrate; determine rights or obligations; make awards or orders; or appoint a board of reference. It cannot do these things even if the parties agree. The AIRC can only make a recommendation at the parties’ request.

The Part also removes any effective role for the AIRC in facilitating the making of agreements. It cannot make orders, or compel a person to do anything. It may only make a recommendation if the parties request that it do so. It is at best a process for attempting to resolve disputes.

The AIRC (or another provider) can exercise greater powers under the dispute clause in an agreement, but only if the parties to an agreement expressly confer these power on the Commission.

The AIRC’s role in private arbitration is confined to roles expressly conferred upon it by the parties.

The ACTU also noted that the Victorian Employee Relations Act established a system of mediation and voluntary arbitration and that the former head of the Employee Relations Commission was critical in her assessment of the system. The former head claimed that the system was ineffective because:

• Placing mediation within a formal system of applications mitigated against the effectiveness of the exercise of the power by the ERCV and the establishment of a Mediation Service within the ERCV.

• the consent process exacerbated disputes and distracted the attention of the parties into a debate about the nature and scope of the consent being given to the exercise of powers by the ERCV.

• industrial disputes remained unresolved because one or more parties refused to consent to the exercise of any power by the ERCV.

Rather than reduce the capacity of the AIRC, the Democrats believe that the capacity of the AIRC needs to be improved, specifically:

• provide the AIRC with powers to make ‘good faith’ or genuine bargaining orders (as we have already tried to move)

• increase its capacity to resolve disputes on its own motion and increase resources to ensure timely resolution of disputes; and,

• remove limits on some of the subject matters on which the AIRC can make determinations.

To this end we strongly oppose the knee-capping of the AIRC and believe that the provisions in this Bill will be detrimental to agreement making and dispute resolution.
Right of entry—72, 73

The Government’s right of entry provisions implement almost identical amendments Workplace Relations Amendment (Right of Entry) Bill 2004.

It is fair to say that this Bill is most of all a reaction to the actual and perceived abuse of right of entry by a minority of union officials. In negotiating the passage of the WRA, the Democrats rejected the proposal of the Coalition government that right of entry, among other things, should be restricted to a written invitation. It was just not practical in all circumstances.

Instead the Democrats negotiated a scheme that in our view provided a sensible balance of union, employer and employee rights.

Professor McCallum in evidence to the 2004 Senate committee hearing into the Building and Construction Industry raised concerns about watering down the system that the Democrats negotiated:

What I would say about right of entry is that, under our system, it is for the arbitration inspectors and the registered inspectors to have the capacity to police awards and certified agreements. I do not think that that ought to be destroyed or watered down.

Obviously improper use of right of entry is another thing.

Union right of entry to workplaces for the purposes of consulting with members and those eligible to become members has been seen as fundamental to the core purpose of trade union organisation, as lawyers Shaw and Walton have observed:

It is plain that effective trade union organisation of employees cannot occur without access on the part of the union and its authorised representatives to workplaces in order to recruit non-unionists, to communicate with union members and take up their concerns, and to police award prescriptions and occupational health and safety requirements by inspecting the workplace.

This Bill before the Committee is another attempt to further restrict the rights of all unions with respect to right of entry, for what appears to be the purpose of preventing a relative few officials from a few unions from continuing to abuse the system.

These provisions will affect all unions, yet there is little evidence that a widespread problem with respect to right of entry exists. A few court cases identifying particular problems are not evidence that the system is broken, and that the whole union movement should face drastic change.

The provisions before us in this Bill do deviate from the Workplace Relations Amendment (Right of Entry) Bill 2004 in two important ways.

The 2004 Bill exempted health and safety inspectors from the requirement of a permit. The provisions in this Bill will require a permit holder who is on site for a health and safety inspection to give 24 hours notice of inspection of documents. As the ACTU pointed out this would provide an opportunity for documents to be tampered with, which is of concern if they had been a OH&S breech.

In their submission to the inquiry into this Bill, the ACTU noted another significant effect of the Bills right of entry provisions:

The previous Workplace Relations Amendment (Right of Entry) Bill 2004 preserved a permit holder’s right to enter a premise where work was being carried on under an award to which the union was bound. The government introduced an amendment to exclude workplaces where all employees are on AWS on grounds that the award no longer operates.

The changes to the operation of awards under this Bill, whereby agreements are no longer underpinned by awards but instead oust their operation, has an impact on the scope of a right of entry. The effect is to remove the right of entry in respect of workplaces covered entirely by AWAs, employee collective agreements or the Australian Fair Pay and Conditions Standard. This would effectively exclude unions from workplaces where they are not already organised.

It will inhibit workers, especially those in workplaces where there are few members of the union, from accessing the information and support.
This provision not does not just place hurdles and barriers to entry; it excludes potentially thousands of workplaces from right of access.

The proposal needs to be read in conjunction with the provisions for unilateral termination of workplace agreements, that allow the employer to terminate the agreement to which the union is bound, and thus oust the operation of the award. This gives the employer the ability to not only reduce pay and conditions, but also prevent the organiser from entering the workplace during negotiations discuss possible claims, and to report back on negotiations.

The Democrat amendment items 71 and 72 assures that employees have access to advice and information at the workplace, which is consistent with ILO C 87, when they are negotiating an agreement, by deleting the words, that restrict right of entry to premises covered only by awards or collective agreements.

Specifically item 71 deletes the phrase at 208(1)(c) “being an award, collective agreement or order that is binding on the permit holders organisation” and 208 (2) restricting the right to investigate an AWA breech.

Similarly item 72 deletes 221(a) the phrase “being an award, collective agreement or order that is binding on the permit holders organisation”.

**Outworkers—74 Moves sheet 4762 instead**

The Democrats have been a long-term advocate of outworkers and were instrumental in ensuring they received protection during the transfer of Victorian powers.

The Democrats believe that comprehensive amendments to the WorkChoices Bill for outworkers are required in light of the complexity of the Bill and the documented lengths that unscrupulous employers in this industry will go to in order to find loopholes to avoid their legal obligations and continue exploitative practices.

The Democrat amendments that were developed by Fairware group, parliamentary counsel, with input no doubt from other senators in this chamber, do the following key things:

1. They provide a comprehensive definition of an outworker, and ensure that outworkers are recognised as employees and those who engage them are recognised as employers;
2. They provide for a uniform set of protections by ensuring that state laws protecting outworkers are protected and maintained and that that similar federal provisions apply where any gaps in coverage exist;
3. They ensure the continuation of Federal and State Award provisions protecting outworkers and prevent contracting out of obligations;
4. They allow for scrutiny of the contracting chain by inspectors and the TCFUA and provide for current prosecution rights to be maintained;
5. They provide for uniformity with state provisions allowing outworkers to recover unpaid remuneration up the contracting chain; and
6. They ensure that outworkers cannot be engaged on an AWA as any capacity to enter an AWA with an outworker, even with safeguards about the content, will undermine all other protections. There will be no scrutiny of AWAs by the Employment Advocate, and no capacity for scrutiny by anyone else, and heavy penalties for any other person disclosing the content of an AWA. Given the particularly vulnerable position of these workers, they would be unlikely to ever individually disclose these conditions.

**DIFFERENCE BETWEEN DEMOCRAT AMENDMENT AND GOVERNMENT AMENDMENT**

Democrats

- provide a comprehensive definition of an outworker, and ensure that outworkers are recognised as employees and those who engage them are recognised as employers;

Government

- use a limited definition of outworker which excludes large numbers of outworkers because of the corporate structures and sham contracting arrangements they are forced to assume
- Do not include deeming provisions, which legalises “opting out” of any protections the Bill provides
Proposes a half-baked solution of allowing so-called “non-employers” to be bound by the federal Award

UNITARY SYSTEM TO PROTECT OUTWORKERS

Democrats
- provide for a uniform set of protections by ensuring that state laws protecting outworkers are protected and maintained and that that similar federal provisions apply where any gaps in coverage exist;

Government
preserves state laws, however in Victoria, dependence on the federal award will leave large holes in the effect of the state act.
creates a “two tiered” system by not matching state protections with federal laws.

STATE AND FEDERAL AWARD PROTECTIONS

Democrats
- ensure the continuation of Federal and State Award provisions protecting outworkers and prevent contracting out of obligations.

Government
- Fails to properly protect state and federal awards by allowing contracting out of the Award provisions, leaving very large loopholes for unscrupulous employers to stride through

SCRUTINY, MONITORING AND PROSECUTION ALONG THE CONTRACTING CHAIN

Democrats
- Protects the union’s well established industry compliance role, regardless of whether it is in relation to a member of the union or not.

Government
- preserves state laws, but will prevent the union’s industry compliance role from occurring federally by preventing entry and inspection and eliminating the union’s capacity to prosecute for breaches of outworker provisions.

CAPACITY TO RECOVER UNPAID MONIES

Democrats
- provide for uniformity with state provisions allowing outworkers to recover unpaid remuneration up the contracting chain

Government
- No provisions for recovery of remuneration up the contracting chain, creating a “two tier” system of rights for some outworkers but not others

Appointments on merit—10, 11, 12, 13, 17, 18

The Democrats have always been concerned to ensure that wherever appointments are made to the governing organ of public authorities, whether they be institutions set up by legislation, ‘independent’ statutory authorities or quasi-government agencies, that the process by which these appointments are made is, and is seen to be, transparent, accountable, open and honest.

Amendments 10, 11, 12, 13, 17 and 18 are Democrats standard appointment on merit amendments that we are applying here to the appointment of senior members of the AFPC and the Employment Advocate.

These amendments are particularly critical for the Australian Fair Pay Commission because the creation of the AFPC at the expense of the AIRC has been a political one, and motivated by a desire to dampen wage increases. As has been said earlier in this debate the Government have opposed every wage increase granted by the AIRC in the last decade, the desire to interfere in minimum wage decisions is strong, and this can easily be done by the type of people appointed to the AFPC. It is therefore critical that the appointment process is transparent and that based on merit.

Sheet 4760—preserving the Rights of the WA branch of the AMA

In WA the Australian Medical Association (WA) is recognized under the State Industrial Relations Act for the purpose of representing all Salaried Medical Practitioners. Currently the AMA (WA) covers all Salaried Doctors and is respondent to 2 awards and 11 agreements. Our industrial representation is very extensive and includes such areas as Country Health Services—
North West Salaried Doctors, Clinical Academics, RFDS, Aboriginal Medical Services and Private Emergency Depts just to name a few. All of our State Teaching Hospitals—RPH, PMH, SCGH, KEMH and Fremantle are also covered by these agreements for both junior and senior consultant staff.

However as presently drafted this Bill does not cover the WA AMA. According to the AMA, unless this matter can be addressed next week the AMA (WA) will need to cease representing Salaried Doctors. The impact this will have on medical services throughout WA will be significant. WA has the worst doctor patient ratio of any state and for good measure has more overseas trained doctors per head of population than any other State. On a monthly basis our position worsens. Our state already struggles to attract and retain doctors in salaried service as the eastern seaboard offers higher wages, specialized training and greater opportunities. Mix with this the size our state and the demographics and you have a time bomb.

It is likely that only amendment 1 on this sheet is necessary. It reads that an organisation means an organisation registered under the Registration and Accountability of Organisations Schedule and includes any entity recognised as having the right to represent industrial interests of employees in any of the State Acts identified in paragraph (a) of the definition of State or Territory industrial law immediately before the commencement of Schedule 1 of the Workplace Relations Amendment (Work Choices) Act 2005 which were not registered as employee associations for the purposes of those State Acts.

**Democrat amendment to Government amendment 164 on sheet PN 271**

The Governments amendment appears to address the concern that Senator Barnaby Joyce has been telling the media for a month now is his key concern of the legislation. His concern was that companies with more than 100 employees could restructure in such a way that separate entities would then have less than 100 employees. Although why Senator Joyce was so concerned that a potential for few hundred or thousand employees could find themselves not protected by unfair dismissal laws because their employer restructured, when he is quite willing to support something like $4million employees working for companies with less than 100 employees, is a mystery.

Anyway back to the amendment at hand.

The Government have moved an amendment that attempts to placate Senator Joyce, but the amendment is completely inadequate.

Which means that Senator Joyce has agreed to an amendment that won’t rectify the problem that he has been concerned about for the last month.

The Governments amendment fails for 2 reasons. Firstly because it refers only to the Corporations Act it will not cover un-incorporated com-
panies in Victoria and the Territories that are covered by this act and secondly it will not cover companies that restructure through partnerships, joint ventures, or projects.

The Democrats amendment (2) on sheet 4776 introduces a new definition of one entity, which you will find in para (b), which says that bodies are taken to be one entity if they carry on a business, project or undertaking as a joint venture or common enterprise.

This amendment, while still not 100% foolproof, goes someway to closing the major loophole in the governments amendment.

**Senator WONG** (South Australia) (3.43 pm)—We are keen to vote on this and move on to the next debate. Is it possible for the minister to provide an answer to Senator Campbell so that we can do so?

**Senator ABETZ** (Tasmania—Special Minister of State) (3.43 pm)—I have been advised that section 254(1)(i), which is a freedom of association provision, deals with that issue. If your award or whatever requires or indicates a certain time being required, that will be that which is required to be provided by the employer.

**Senator FIELDING** (Victoria—Leader of the Family First Party) (3.43 pm)—Before we put the question, I have a reflection to share with fellow senators. It is not a question, so I do not expect an answer to it. It saddens me that we have got down to this—that is, that we have to get down to a vote in the Senate on guaranteeing a meal break for all Australians because the bill does not cater for it. It does sadden me. I just ask each fellow senator to really think about it and reflect upon why we would not do that for fellow Australians.

Question put:

That the amendment (Senator Fielding’s) be agreed to.

The committee divided. [3.49 pm]

(The Chairman—Senator JJ Hogg)

Ayes…………… 33
Noes…………… 35
Majority………. 2

AYES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Campbell, G.
Carr, K.J. Conroy, S.M.
Crossin, P.M. Evans, C.V.
Faulkner, J.P. Fielding, S.
Forshaw, M.G. Hogg, J.J.
Hurley, A. Kirk, L.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Moore, C. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Polley, H. Sherry, N.J.
Siewert, R. Stephens, U.
Sterle, G. Stott Despoja, N.
Webber, R.* Wong, P.
Wortley, D. *

NOES

Abetz, E. Adams, J.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Coonan, H.L. Colbeck, R.
Ellison, C.M. Eggleson, A.
Fierravanti-Wells, C. Fifield, M.P.
Heffernan, W. Hill, R.M.
Humphries, G. Johnston, D.
Joyce, B. Kemp, C.R.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J.* Minchin, N.H.
Nash, F. Parry, S.
Patterson, K.C. Payne, M.A.
Ronaldson, M. Santoro, S.
Scullion, N.G. Troeth, J.M.
Trood, R.

PAIRS

Hutchins, S.P. Watson, J.O.W.
Ludwig, J.W. Barnett, G.
Milne, C. Vanstone, A.E.
Ray, R.F. Ferris, J.M.

* denotes teller

Question negatived.
Senator SIEWERT (Western Australia) (3.52 pm)—by leave—I move Australian Green amendments R(12), (12), (13), (14), (15) and (16) on sheet 4766 revised:

R(12) Schedule 1, items 113 and 114, page 356 (line 4) to page 357 (line 10), TO BE OPPOSED.

(12) Schedule 1, item 113, page 356 (lines 8 and 9), after “employer”, insert “, together with any related entity, related body corporate and associated entity of the employer”.

(13) Schedule 1, item 113, page 356 (after line 21), at the end of section 5F, add:

(c) for the purposes of subsection (5E), related entity has the meaning given by section 9 of the Corporations Act 2001, excluding item (k) of that definition;

(d) for the purposes of subsection (5E), related body corporate has the meaning given by section 50 of the Corporations Act 2001;

(e) for the purposes of subsection (5E), associated entity has the meaning given by section 50AAA of the Corporations Act 2001.

(14) Schedule 1, page 356 (after line 3), after item 112, insert:

112A At the end of subsection 170CE(1) Add:

; or (d) on the ground that the employer had re-arranged the affairs of the business in which the employee was employed with a purpose or effect of evading the operation of subsection 170CE(6).

(15) Schedule 1, page 356 (after line 3), after item 112, insert:

112B After subsection 170CE(1) Insert:

(1A) Where an employee applies to the Commission for relief in respect of termination of employment in accordance with paragraph 1(d), the Commission must investigate and consider the rearrangement of business affairs that led to the termination of employment including:

(a) whether the restructuring occurred after the commencement of the Workplace Relations Amendment (Work Choices) Act 2005; or

(b) their bona fides; or

(c) whether a purpose or effect of the rearrangement was to evade the operation of subsection 170CE(6).

(16) Schedule 1, page 362 (after line 22), after item 130, insert:

130A At the end of subsection 170CK(2) Add:

(3) because the employer has rearranged the affairs of the business so that the employer now employs less than 100 employees, where a reason for that rearrangement was to evade the operation of subsection 170CE(6).

These amendments relate to unfair dismissal. Amendment (R12) is to remove the provision which deals with unfair dismissal for premises with fewer than 100 employees. I think the amendment is fairly obvious. It removes the protection of workers. I am sorry to use the word ‘fair’ again, but I think it is grossly unfair to imply that a business is small when it has fewer than 100 employees. Quite obviously this is designed to allow employers and bosses to sack anybody at will. I think it is grossly unfair to put employees in this position. It takes away employees’ protections. I do not believe it is acceptable in this community.

Senator WONG (South Australia) (3.55 pm)—I will speak briefly. I want to flag to the minister that there are a couple of Labor senators who have not spoken in this debate who would like to speak so I will try and
Senator WONG—We could debate that. What we are dealing with now are the sections of the bill which effectively remove the rights to unfair dismissal remedies for four million Australians. We are supportive of the Greens’ amendments to essentially take these out of the legislation. I do not recall hearing before the last election the Prime Minister telling the Australian people that he was going to deny four million Australians the right to dispute an unfair dismissal. I do not recall the government or its members coming forward and saying, ‘We’re going to take existing rights, rights which have been in place for many years, from four million Australian workers.’ They did talk about 20, I will agree with that, but the provisions which Senator Siewert is seeking to amend exclude anyone who works for an employer with fewer than 100 employees. There is also an exception of operational requirements which you could drive a truck through.

This means that, for 98 per cent of Australian workplaces and 99 per cent of private employers, if you are dismissed unfairly, you do not have a remedy. I ask: how can we say in a modern Australia that if you are the 101st person on the job you have to be treated fairly but if you are the 99th person you have to be treated differently and unfairly? If you are the 101st person on the job, you can turn up to work each day knowing you have some remedy, security or recourse if you are treated unfairly, but if you are the 99th person on the job you can be treated unfairly, arbitrarily and capriciously, with no remedy.

The government talks about its supposed unlawful dismissal provisions which exist in the act. These are provisions which allow employees in certain circumstances to challenge their dismissal. They are highly technical and are proceedings which have to be taken to a court not a commission. Since 1996 only 147 of these claims has been referred to the Federal Court, yet we have over 50,000 unfair dismissal applications. They are expensive. We are talking tens of thousands of dollars to run one of these cases. The majority of unfair dismissal claims are conciliated by agreement between the parties.

It is bizarre that the government has not come clean on the limited grounds on which an employee can claim an unlawful discrimination case. Senator Marshall asked questions about this in the Senate committee and it is quite clear that you will be able to be sacked for chewing gum. For some reason, that is a reasonable reason. The unlawful provisions do not extend, for example, to protecting a person who makes an internal complaint of sexual harassment. They do cover you if you make a complaint of sexual harassment to an external body but not to an employer. I would have thought most Australians would think people in that situation should be protected. A woman who suffers sexual harassment and complains to a boss has no remedy of unlawful dismissal under this legislation.

Let us be clear what we have before this chamber. We have provisions which mean that four million Australians will not have the right to dispute their dismissal if they are dismissed unfairly. I did not hear any word about that before the election and I do not think anyone else did. The government have yet to explain why they think stripping these rights from Australian workers is a good thing. They say it is about job creation. The evidence for that is flimsy in the extreme. To my way of thinking, and to that of others on this side, if you are seriously saying to Australian workers that they should not have the
right to challenge their dismissal if it is unfair, you need a little bit more than flimsy evidence. But that is what the government are still proceeding with.

They have not explained what makes someone who is the 101st employee different to the 99th. They have not explained why they are saying to workers, ‘Your only avenue is expensive and complex litigation.’ They have not justified to the Australian people why they think these rights should be stripped away. This is one of the starkest examples of the bad faith this government have shown to the electorate. They claim they have a mandate for this bill before the parliament. We say they do not, because the extent of the drastic reduction in rights and entitlements in this bill was not made clear to the Australian people before the election. There is no starker example of this than the unfair dismissal provisions.

We were never told about this. Why? I think it is because most Australians agree that this is fundamental to a fair go. If you are dismissed unfairly, you ought to be able to do something about it. If this legislation is passed, I fear for those workers who have very few rights, very little power and very few financial resources. What will they do if they are dismissed unfairly? Do the government really think that some of these workers will have the resources to go to a lawyer and launch an unlawful determination action? We are saying to those people, ‘You have no remedy; you have no redress.’ Labor oppose this section of the bill. We oppose the bill in total—we think it is a bad package—but we think this is a particularly pernicious section of the legislation.

Senator ABETZ (Tasmania—Special Minister of State) (4.01 pm)—I understand that we are having a cognate debate, Madam Temporary Chairman, so if it is appropriate, I will move the government amendments.

The TEMPORARY CHAIRMAN (Senator Kirk)—Minister, I am afraid it is not appropriate at this point. You can only move them later.

Senator ABETZ—All right. Let us just have a general debate about unfair dismissal laws. I am happy to engage on that basis and thank you for that guidance, Madam Temporary Chairman. The unfair dismissal laws in this country are a failed social experiment. It was not always thus in Australia. They were introduced in 1993 by the then Keating government. So bad are those laws that when the former Premier of New South Wales, Mr Bob Carr, sought to get out of the opposition and into the premiership, he made a solemn promise to the people of New South Wales. So bad are those laws that Mr Carr found it necessary to say publicly that if he were elected Premier of New South Wales he would not introduce unfair dismissal laws to mirror those which had been passed in Canberra. It was on that basis that he was able to allay fears.

Let us make no mistake: these laws are a failed social experiment. Indeed, during the last election campaign, I went to a particular work site, a small business. I had campaigned there about 10 years previously. As always in Tasmania, they were very polite and very kind, but I was told—

Senator McEwen interjecting—

Senator ABETZ—No, it was on the east coast of Tasmania, not the west coast, Senator McEwen. As always, they were polite, courteous and kind—all those sorts of things—but, 10 years ago, from the owner-operator of the business right through to all the workers, they were very strong, traditional Labor supporters and they indicated that they would not be providing support. That is the way it is in politics. You just smile and leave with a handshake. I do not know why, but I thought I would test my
luck again and called in during the 2004 election campaign. The reception was completely and utterly different.

The owner-operator and workers came around and said, ‘Eric, we’re going to vote for you and your mob this time.’ I said, ‘That’s nice, compared to last time.’ Do you know what the motivation was for this? It was to get rid of the unfair dismissal laws. In that workplace, the employees had seen the corrosive and destructive effect of these unfair dismissal laws on their employer, themselves and their workmates. There was a rotten egg in the group at that workplace. When that occurs, it can sink the business. As a result—and I will not go into the details; suffice to say that dishonesty and other matters were involved—the work force were disgusted when, finally but surely, the employer had to pay thousands of dollars of go-away money to somebody who had behaved dishonestly. Every single one of those workers asked: ‘How come that can be the law? It is wrong.’ And they were dead right.

Mr Beazley himself was forced to acknowledge exactly that point on South Australian radio. He had to admit that, with the unfair dismissal laws, the con artist can rip the system off and that people get paid go-away money on a very regular basis. So we have experienced Mr Keating’s introduction of the unfair dismissal laws, Bob Carr’s running away from them and Mr Beazley’s acknowledgment of all the problems associated with them. But, of course, as is Mr Beazley’s wont, there was the capacity to talk the talk but an inability to walk the walk. It is a huge disincentive to small business to have these unfair dismissal laws. That business on the east coast of Tasmania told me that they would not be re-employing somebody to fill that position until such time as the unfair dismissal laws were changed in this country. So there is already one vacancy available for one of our fellow Australians to get a job as soon as these laws are changed.

I indicate to those opposite that this is not the only example in the Australian work force. In fact, many studies have been undertaken, and we can argue whether it is the one that said 6,000 or the one that said 77,000 jobs would be created if unfair dismissal laws were to be repealed. We can argue that for as long as we like. Sure, we are in the area of speculation, but everybody agrees on one thing: the unfair dismissal laws are a disincentive to employment creation. The only argument is: how many jobs would be created?

For the purpose of this debate, I am willing to settle for the very lowest figure that anybody has suggested: the 6,000 figure. If we can deliver another 6,000 jobs for the unemployed of this country by moving a piece of legislation in this place then I think we have every moral obligation to do so. Of course, what we as a government want to see is the removal of this failed social experiment from the statute book to allow employers and employees to get on with the business of running successful enterprises.

I also indicate to those opposite that I am not aware of any employer who gets up in the morning and says, ‘Right, who can I sack today?’ I know of not one employer who gets up with that intention in the morning. Indeed, the investment made in their employees is such that they are the most valuable asset to their business. Having to replace workers is expensive and disruptive, and everything militates against an employer behaving in an inappropriate way. However, we accept that there may be some, and in those circumstances we have the regime that deals with unlawful termination. Once again, we have a very balanced package. For those who exceed what would be the normal and considered standard, you have the unlawful termi-
nation provisions. I commend the government’s amendments to the Senate. I trust that very shortly the small business community of Australia will be able to fill the positions that they have been too scared to fill because of these laws.

Senator SIEWERT (Western Australia) (4.10 pm)—I moved a package of amendments and spoke to the issue of having fewer than 100 employees. I would like to speak to the other set of amendments. When we are talking about unfair dismissal, we are actually talking about three processes. We are talking about workplaces that have up to or fewer than 100 employees and we are also talking about the circumstance where businesses restructure to split up their organisation to enable them to have fewer than 100 employees. I note that the government has amendments to which I would like to address a couple of comments in a minute. Then there is the issue of employees being dismissed for operational reasons. Through our amendments, we have sought to address each of these three situations.

I very quickly spoke to the issue of businesses restructuring to have fewer than 100 employees, as did Senator Wong, but looking at the amendments the government will be moving shortly to address the issue, I note that their amendments are very similar to those of the Australian Greens. However, there is a major difference. The government have included in their amendments to which I would like to address a couple of comments a minute. Then there is the issue of employees being dismissed for operational reasons. Through our amendments, we have sought to address each of these three situations.

Also of deep concern to us is subsection 170CE(5B), the general provision in the bill which allows employers to terminate employees for genuine operational reasons or for reasons that include genuine operational reasons. We have a deep concern about this because, to my reading of that, it means that you can actually sack employees when you have over 100 staff if it happens to include reasons for genuine operational purposes. We are seeking to make amendments to ensure that does not happen, with general provisions similar to those in the tax act. There are general provisions in the tax act which mean that you cannot do things to avoid tax. We are seeking to include provisions in this act that mean you cannot do things to get around the unfair dismissal laws. We believe those provisions are essential.

Obviously, we believe the provision that removes the unfair dismissal laws should be deleted. You cannot amend that; it should just be deleted to maintain existing protections for workers. Then there is a set of amendments that deals with restructuring, and I have already asked the minister to explain why the government’s provisions are not as broad as the provisions of the Australian Greens. There is also the section that deals with trying to prevent unscrupulous bosses—because in this case it will be only the unscrupulous bosses who are caught by this—from seeking to use this legislation to unfairly dismiss employees. I simply do not know why that provision has been put in there. What else could that be there for if it were not to enable employees to be unfairly dismissed?

Senator McEWEN (South Australia) (4.14 pm)—This would have to be one of the most reprehensible pieces of legislation in the history of workplace relations in Australia. I would like to point out to Minister Abetz that, when he said that the introduction of unfair dismissal laws was something...
that the Keating government did, it may have been the case federally, but he will find that we have had unfair dismissal laws in the states for a considerably longer time—since 1972 in South Australia, where I come from. Oddly enough, despite the fact that we have had unfair dismissal laws in that state, South Australia seems to survive and there still seem to be plenty of small businesses in South Australia.

I am going to give an example of how one of those small businesses treated a woman very unfairly. If she had not had access to unfair dismissal laws, she would have been completely dudged, like you expect 3.7 million Australians to be because they will not have any access to unfair dismissal laws. It will probably be quite a lot more than 3.7 million because, as Senator Siewert rightly pointed out, the so-called operational reasons can be virtually anything. Any employer with half a brain will be able to construct some reason for unfair dismissal that they can construe as an operational reason.

By changing the unfair dismissal laws to deny 3½ million or more Australians the opportunity to seek redress from employers, you are fundamentally changing the way the system in Australia has operated in which employees have had a fair go. We have this legislation to protect vulnerable workers. It is not there to prevent employers running their businesses; it is to prevent vulnerable workers from being exploited or otherwise treated unfairly by those few employers who, either because they are not very nice people or because they are just stupid, deny people the right to continue in their employment.

I would like to give you an example from my background as, yes, one of those much reviled trade union officials that you keep referring to. This is the first unfair dismissal case I ever undertook. This woman was approximately 45 years old. She had worked for eight years as a receptionist. During that eight-year period she became a single parent. She had two children. She was probably lucky to earn, I think, about $30,000 a year. She worked for eight years as a receptionist in a small club, which would be a constitutional corporation. She turned up every day, she went to work, there was no problem with her work performance and she was given accolades by her employer all the time, but one day he came to her and said: ‘Jan, we don’t need you anymore. I am giving you your two weeks notice under the award. We don’t need you anymore. We would like to thank you for the great work you’ve done. You have been an exemplary employee but we don’t need you anymore, so here is your two weeks notice. Off you go.’

She found out shortly afterwards that she was terminated because that employer had a daughter who had reached an age when she was looking for a job, and he decided that this would be an ideal job for that young woman. So the 45-year-old woman with two kids was sacked. Fortunately, the union took her case to the Industrial Relations Commission. It did not go to trial, but she went to conciliation and the commissioner pointed out to this employer that he might be in a little bit of trouble if the case proceeded further.

She was awarded adequate compensation. It did not compensate her for being treated that way by her employer, but at least she had some money to live on while she looked for another job. Under your legislation, that woman would walk out of that workplace with nothing and have absolutely no redress. I can give you plenty more examples, and I am sure every union official on this side of the chamber can give you examples of that kind of situation. That employer was not necessarily nasty; he was just stupid—and they exist out there. If there had not been these legislative provisions to enable that
woman to get redress, she would have had to walk away with nothing.

In conclusion I have to say, having sat through all this argument, having watched you rip away penalty rates from people, having watched you force down the minimum wage of vulnerable Australians—and particularly working women in this country, who mostly work in unorganised workplaces and who mostly work under common rule award conditions, under which they do not have the opportunity to collectively or individually bargain with their employer—it is absolutely galling to hear you say as you stand there that you are the party looking after families. How can you say you are looking after families when you are taking away the right of vulnerable workers to pursue their employer for compensation for being unfairly terminated? How can you say that you are the party that is looking after families when you are going to drive down their wages, take away their job security and make life for them worse than it has ever been?

Senator FORSHAW (New South Wales) (4.20 pm)—I have a specific question that I would like the minister to respond to. It is an important issue. I understand that the government is aware of the matter I am about to raise. It came to light last week—certainly it was reported in the media—that the effect of the changes to unfair dismissal laws under this legislation would be that cases that are partly heard or for which decisions are pending, including in state jurisdictions, would effectively be terminated. The proceedings would be null and void and that would be the end of it.

I understand that the government has indicated that this is the position and it would take some steps to correct the problem, because it clearly would involve a retrospective application. I want to ask the minister about some specific issues. Firstly, what action is the government intending to take to prevent cases that are currently on foot from being, in effect, abandoned? Secondly—and I ask this particularly on behalf of my colleague, Senator Hutchins—will owner drivers in the transport industry in New South Wales, for instance, whose contracts with employers are terminated have access to the same unfair dismissal procedures? I want to know whether or not the government’s intention is to ensure that those sorts of claims—and any other claims that are within that scope of unfair dismissal, including those of owner drivers—will be able to be carried forward to conclusion?

Senator ABETZ (Tasmania—Special Minister of State) (4.22 pm)—To quickly deal with the issue Senator Wong raised in relation to sexual harassment, the employee in that circumstance would be able to complain on the discrimination grounds in section 170CK(2)(f), which include sex discrimination. The employee would also have a right of recourse to HREOC and from there, if need be, to the Federal Court.

In relation to Senator McEwen’s point, ‘genuine operational requirements’ has an accepted meaning in industrial relations law and that will continue.

On the matters Senator Forshaw raised, I will first respond in relation to the part heard matters. We will be dealing with that situation by regulation, but we need to be very careful to ascertain which matters may be stopped and those which should not be stopped. The example that I think I used this morning was the state wage cases. That is our intention, and that is why we did not support Senator Murray’s amendment earlier in the day. We will be dealing with this by way of regulation. Those regulations will be a disallowable instrument and so the parliament will have some ownership of that. We
do not want a cover-all phrase in relation to this. We want to examine each area independently to ascertain what would be fair and reasonable in the circumstances. The matter of owner-drivers will be considered in the totality of the consideration of the regulations.

Senator MOORE (Queensland) (4.24 pm)—I want to take a short time to make a couple of comments about this particular issue of unfair dismissal. In the debate we have heard in the chamber over the last couple of days a number of senators from the government side have decided that they would laud the unfair dismissal provisions in their new Work Choices program. One of the more offensive things that I have heard in the debate we have had is those senators from the other side reading from the legislation—taking up time by listing the terms under which people may be able to make claims under the new Work Choices legislation.

They read through it and listed a series of very clear discrimination clauses. They were not unfair dismissal clauses but clearly issues under discrimination law. They talked about the fact that we will be blessed under the new legislation to retain our rights to claim unfair dismissal on the grounds of age, gender, religious affiliation and trade union affiliation—which always tends to slip towards the bottom. The senators over there have been so keen in their speeches to say how proud they are that these provisions will be retained. For the record, these provisions are a right. They have been hard fought for and we have been proud to achieve them. We talked earlier about the kinds of debates that have gone on in this place. There were outraged cries from members of the then opposition, who are now on the government side, when these issues were brought forward as legislation in the past.

We have heard the horrific scare campaigns about how these various protections would bring down industry and cause the loss of jobs. But we should be talking about how an effective relationship—‘an harmonious relationship’, to quote the minister—would be best enhanced if people felt that they were being protected in their workplace. We should be looking at the clear protection of rights and a sense of security and respect. There should be no sense of being grateful. There should be acceptance that these are rights which all workers must feel free to claim. There should be no sense of them being given as some kind of gift from someone in an unequal power relationship.

In terms of the unfair dismissal process we can certainly talk about the horrific way that employers have been scared by hearing stories that are wrong. The figures to which they have been given access are wrong. There were all kinds of claims about how many jobs were going to be created by getting rid of unfair dismissal from the record that have not been proved. We should have genuine acceptance that there is one set of values which look to the overwhelming power of bosses being able to hire and fire at will, and another set of values, on this side of the house, including the crossbench, which look to the rights of workers. When you are talking about unfair dismissal more and more what we are hearing is that it is the view of the government that all dismissal is fair, that dismissal is a right owned by the employer—
that the work choice is owned by the employer and not the employee. But do not expect that we should be grateful for hard-won rights. Issues of true discrimination in the workplace are our right, not something for which we should be grateful.

Senator SIEWERT (Western Australia) (4.29 pm)—I am very quickly seeking the minister’s response to the question I asked him about the related entities and associated entities. Could he assure us that, if those two provisions are not included, they will not be used to circumvent the amendments that the government is putting forward?

Senator ABETZ (Tasmania—Special Minister of State) (4.29 pm)—I do not have the time to respond.

The CHAIRMAN—The time allocated for consideration of this bill in Committee of the Whole has expired. The question is that the amendments before the chair—that is, Greens amendments (12) to (16) on sheet 4766 revised—be agreed to.

Question negatived.

The CHAIRMAN—The question is that items 113 and 114 stand as printed.

Question agreed to.

The CHAIRMAN—The question is that remaining Democrat amendments on sheet 4765 revised, 4760, 4776 and 4762 and the joint Democrat-opposition amendment on sheet 4759 be agreed to.

Australian Democrat amendments on sheet 4765 Revised—

(10) Schedule 1, item 10, page 31 (line 4), at the end of subsection 7P(1), add “on receipt of a recommendation based on merit received from the Minister in accordance with section 7PA”.

(11) Schedule 1, item 10, page 31 (after line 9), after section 7P, insert:

7PA Procedures for merit selection of appointments under this Subdivision

(1) The Minister must by writing determine a code of practice for selecting a person to be appointed by the Commonwealth to a position under this Subdivision, that sets out general principles on which the selections are to be made, including but not limited to:

(a) merit; and

(b) independent scrutiny of appointments; and

(c) probity; and

(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the Gazette.

(3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

(12) Schedule 1, item 10, page 34 (line 17), at the end of subsection 7Y(1), add “on receipt of a recommendation based on merit received from the Minister in accordance with section 7YA”.

(13) Schedule 1, item 10, page 34 (after line 26), after section 7Y, insert:

7YA Procedures for merit selection of appointments under this Subdivision

(1) The Minister must by writing determine a code of practice for selecting a person to be appointed by the Commonwealth to a position under this Subdivision, that sets out general principles on which the selections are to be made, including but not limited to:

(a) merit; and
(b) independent scrutiny of appointments; and
(c) probity; and
(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the Gazette.

(3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

(17) Schedule 1, page 57 (after line 10), after item 42, insert:

**42A At the end of section 83BA**
Add, “appointed in accordance with the merit selection process set out in section 83BAA”.

(18) Schedule 1, page 57 (after line 10), after item 42, insert:

**42B After section 83BA**
Insert:

**83BAA Procedures for merit selection of the Employment Advocate**

(1) The Minister must by writing determine a code of practice for selecting the Employment Advocate, that sets out general principles on which the selection is to be made, including but not limited to:
(a) merit; and
(b) independent scrutiny of appointments; and
(c) probity; and
(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the Gazette.

(3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

(21) Schedule 1, item 71, page 76 (line 29), omit “required”, substitute “required or requested”.

(22) Schedule 1, item 71, page 101 (line 18), omit “required”, substitute “required or requested”.

(23) Schedule 1, item 71, page 102 (lines 8 to 18), omit subsection 91C(3), substitute:

(3) For the purposes of this section, the employee’s applicable averaging period is:
(a) one month; or
(b) such longer period as is agreed to in writing between the employee and the employer.

(24) Schedule 1, item 71, page 102 (lines 26 to 37), omit “required” (twice occurring), substitute “required or requested”.

(25) Schedule 1, item 71, page 103 (line 1), omit “requirement”, substitute “requirement or request”.

(26) Schedule 1, item 71, page 103 (after line 4), at the end of section 91C, add:

**Unreasonable hours**

(6) An employee must not be requested or required by an employer to work unreasonable hours, whether as additional hours or otherwise.

(7) For the purpose of subsection (6), the factors to be taken into account in determining whether hours are unreasonable include:
(a) any risk to the employee’s, other employees, customers or clients health and safety; and
Note: For purposes of this paragraph, an example is where truck drivers or doctors in hospitals are given unreasonable hours that endanger the health and safety of others.

(b) the employee’s personal circumstances (including family responsibilities); and

(c) any notice given by the employer of the requirement or request to work the hours in question.

Note: For example, hours may be unreasonable because the employee is asked to work excessively long hours, or an unreasonably short shift, or shifts broken by an unreasonably short period, or at unreasonably short notice.

(27) Schedule 1, item 71, page 108 (lines 9 to 11), omit subsection 92H(2), substitute:

(2) To avoid doubt, there is no maximum or minimum limit on the amount of annual leave that an employer may authorise an employee to take, provided that an employee shall be entitled to take at least one period of 14 consecutive days of annual leave in each 52 week period.

(28) Schedule 1, item 71, page 110 (lines 15 to 18), omit the definition of de facto spouse, substitute:

de facto spouse, of an employee, means a person who lives with the employee on a genuine domestic basis although not legally married to the employee.

(30) Schedule 1, item 71, page 122 (lines 15 to 18), omit the definition of de facto spouse, substitute:

de facto spouse, of an employee, means a person who lives with the employee on a genuine domestic basis although not legally married to the employee.

(31) Schedule 1, item 71, page 126 (line 21), omit “52”, substitute “104”.

(33) Schedule 1, item 71, page 135 (lines 7 to 10), omit subsection 94N(4), substitute:

(4) The day stated in the notice must be no earlier than the day that is 4 weeks after the day that the notice was given.

(34) Schedule 1, item 71, page 137 (after line 30), at the end of section 94R, add:

(6) Despite anything in this section, the employee is entitled to return to part-time work until such time as the child of the employee reaches school age.

(35) Schedule 1, item 71, page 140 (line 3), omit “52”, substitute “104”.

(36) Schedule 1, item 71, page 140 (line 33), after “birth”, insert “and that leave may be taken to a maximum of eight weeks”.

R(37) Schedule 1, item 71, page 159 (after line 16), before Subdivision J, insert:

Subdivision JA—Parental leave variations and employment contact

94ZZAA Right to request variations

(1) In this Subdivision:

parental leave means any of the following:

(a) maternity leave; or

(b) paid leave under subparagraph 94F(2)(b)(i) or (ii); or

(c) paternity leave; or

(d) pre-adoption leave; or

(e) adoption leave.

(2) An employee entitled to parental leave pursuant to the provisions of this Division may request the employer to allow the employee:

(a) to extend the period of simultaneous unpaid maternity leave, paternity leave or adoption leave up to a maximum of 8 weeks;
(b) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
(c) to return from a period of parental leave on a part-time basis until the child reaches school age;
to assist the employee in reconciling work and parental responsibilities.

(3) The employer shall consider the request having regard to the employee’s circumstances and, provided the request is genuinely based on the employee’s parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer’s business.

Note: The grounds for refusal might include cost, lack of adequate replacement staff, loss of efficiency and impact on customer service.

R(37A) Schedule 1, item 71, page 159 (after line 16), after 94ZZAA, insert:

94ZZAB Communication during parental leave

(1) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

(a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave;
(b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

(2) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee’s decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(3) The employee shall also notify the employer of changes of address or other contact details which might affect the employer’s capacity to comply with (1).

R(40) Schedule 1, item 71, page 165 (line 22) to page 167 (line 26), omit Division 3, substitute:

Division 3—Representation and bargaining agents

97 Qualifications of bargaining agents

(1) For the purposes of sections 97A and 97B, a person can be a bargaining agent in relation to a workplace agreement at a particular time only if the person meets the requirements in this section at that time.

(2) The person must meet the requirements (if any) specified in the regulations.

(3) If the person is an organisation of employees:

(a) at least one person whose employment is or will be subject to the agreement must be a member of the organisation; and
(b) the organisation must be entitled to represent the person’s industrial interests in relation to work that is or will be subject to the agreement.

97A Bargaining agents—AWAs

(1) An employer or employee may appoint a person to be his or her
bargaining agent in relation to the making, variation or termination of an AWA. The appointment must be made in writing.

Note: Subsection 104(3) provides a civil remedy for coercion in relation to appointments under this subsection.

(2) Subject to subsection (3), an employer or employee must not refuse to recognise a bargaining agent duly appointed by the other party for the purposes of subsection (1).

(3) Subsection (2) does not apply if the person refusing has not been given a copy of the bargaining agent’s instrument of appointment before the refusal.

(4) Subsection (2) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

97B Bargaining agents—employee collective agreements

(1) An employer, or an employee whose employment is or will be subject to an employee collective agreement, may appoint a person as his or her bargaining agent in relation to the making, variation or termination of the agreement.

Note: Subsection 104(4) provides a civil remedy for coercion in relation to requests under this subsection.

(2) An employee whose employment is or will be subject to an employer greenfields agreement may request another person (the bargaining agent) to represent the employee in meeting and conferring with the employer about the variation of the agreement for a period:

(a) beginning 7 days before the agreement or variation is approved in accordance with section 98C or section 102F; and

(b) ending when the agreement or variation is approved.

Note: Subsection 104(4) provides a civil remedy for coercion in relation to requests under this subsection.

(3) Subject to subsection (5), an employer or employee must not refuse to recognise a bargaining agent duly appointed by the other party for the purposes of subsection (1) or (2).

(4) Subsection (3) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

(5) The requirement in subsection (3) ceases to apply to the employer if at any time after the request is made the employee withdraws the request.

(6) The Employment Advocate may issue a certificate that he or she is satisfied of one of the following matters if he or she is so satisfied:

(a) on application by a bargaining agent—that the employee has made a request in accordance with subsection (1) or (2) for the bargaining agent to represent the employee in making, varying or terminating the agreement;

(b) on application by the employer—that, after the making of the request, the requirement in subsection (3) for the employer to recognise the bargaining agent, has, because of subsection (5) or section 97, ceased to apply to the employer.

(7) The certificate must not identify any of the employees concerned. However, it must identify the bargaining agent, the employer and the agreement.

(8) The certificate is, for all purposes of this Act, prima facie evidence that the employee or employees made the request or that the requirement has ceased to apply.
97BA Recognition of union in union collective agreements

(1) The majority of employees whose employment is or will be subject to a union collective agreement may authorise an organisation or organisations to represent them in relation to the making, variation or termination of a union collective agreement.

(2) For the purpose of subsection (1) an employer may, in response to a written request from an organisation or organisations to represent employees in relation to the making of a union collective agreement, voluntarily recognise the organisation or organisations, provided that the organisation or each organisation:

(a) has at least one member whose employment in a single business (or part of a single business) of the employer will be subject to the agreement; and

(b) is entitled to represent the industrial interests of the member in relation to work that will be subject to the agreement.

(3) For the purpose of subsection (1), an employer must, in response to a written request from an organisation or organisations to represent employees in relation to the making of a union collective agreement, give all of the persons employed at the time whose employment will be subject to the agreement a reasonable opportunity to decide whether they want to authorise the organisation or organisations, provided that the organisation (or organisations):

(a) has (or have) as its (or their) members the prescribed number of employees whose employment in a single business (or part of a single business) of the employer will be subject to the agreement; and

(b) is entitled to represent the industrial interests of the members in relation to work that will be subject to the agreement.

(3A) For the purpose of subsection (1), prescribed number, in relation to relevant employees is:

(a) if there are fewer than 80 relevant employees 4; or

(b) if there are at least 80, but not more than 5,000, relevant employees-5% of the number of such employees; or

(c) if there are more than 5,000 relevant employees 250 will be subject to the agreement.

(4) A majority of employees is deemed to have authorised an organisation or organisations to represent them if:

(a) the employer has given all of the persons employed at the time whose employment will be subject to the agreement a reasonable opportunity to decide whether they want to authorise the organisation or organisations; and

(b) either:

(i) if the decision is made by a vote—a majority of those persons who cast a valid vote decide that they want to authorise the organisation or organisations; or

(ii) otherwise—a majority of those persons decide that they want to authorise the organisation or organisations.

(5) An employer must not refuse to recognise an organisation that has been authorised by the majority of employees for the purpose of subsection (1).

(6) Subsections (3) and (5) are civil remedy provisions.

Note: See Division 11 for provisions on enforcement.
(41) Schedule 1, item 71, page 168 (line 27) to page 169 (line 2), omit subsection 98(4), substitute:

(4) The information statement mentioned in subsection (2) and paragraph (3)(a) must contain:

(a) information about the time at which and the manner in which the approval will be sought under section 98C; and

(b) if the agreement is an AWA—information about the effect of sections 97 and 97A (which deal with bargaining agents); and

(c) if the agreement is an employee collective agreement—information about the effect of sections 97 and 97B (which deal with bargaining agents); and

(d) must be appropriate, having regard to the person’s particular circumstances and needs, especially if the employee(s) whose employment will be covered by the agreement are women, persons from a non-English speaking background or young persons; and

(e) any other information that the Employment Advocate requires by notice published in the Gazette.

(42) Schedule 1, item 71, page 172 (lines 30 to 33), omit subsection 99B(5), substitute:

(5) The Employment Advocate is required to consider and determine whether all of the requirements of this Part have been met in relation to the making or content of anything annexed to a declaration lodged in accordance with subsection (2).

(43) Schedule 1, item 71, page 173 (lines 1 to 10), omit section 99C, substitute:

99C Employment Advocate must review workplace agreement to ensure compliance with minimum content and issue a receipt for lodgment

(1) If a declaration is lodged under subsection 99B(2), the Employment Advocate must, within 14 days of the lodgment of a workplace agreement, review the agreement and determine whether the agreement meets the requirements of Division 7 (relating to the content of agreements).

(2) Where the Employment Advocate has determined that the workplace agreement does not meet the requirements of Division 7, the Employment Advocate must issue a notice to the employer.

(3) For the purpose of subsection (2), the notice must identify the requirements of Division 7 that the Employment Advocate has determined are not met and the grounds upon which the Employment Advocate has determined that the agreement does not meet the requirements of Division 7. Where the Employment Advocate has determined that the workplace agreement fails to meet the no-disadvantage test, the Employment Advocate must identify the relevant or designated award that applies to the agreement to which the notice relates.

(4) The notice must identify a monetary amount, calculated by the Employment Advocate, that represents the value of the entitlements to which the employee would have been entitled under the relevant or designated award if the workplace agreement had not been made, in respect of the employment to which the agreement relates.

(5) Provided that the requirements of Division 7 have been complied with, the Employment Advocate must issue a receipt for the lodgment.

(6) The Employment Advocate must give a copy of any notice issued pursuant to subsection (2) or receipt issued pursuant to subsection (5) to:

(a) the employer in relation to the workplace agreement; and
(b) if the workplace agreement is an AWA—the employee; and

c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

99CA Employer obliged to meet shortfall where the requirements of Division 7 (content of agreements) are not met

(1) If a workplace agreement has commenced operation under subsection 100(2), and the agreement does not meet the requirements of Division 7, the employer must compensate the employee(s) for the total value of the entitlements to which the employee(s) would have been entitled for that period under the relevant or designated award, if the workplace agreement had not been made, in respect of the employment to which the agreement relates.

(4) Schedule 1, item 71, page 173 (line 23) to page 175 (line 7), omit section 100, substitute:

100 When a workplace agreement is in operation

(1) A workplace agreement comes into operation on the day the agreement is lodged.

(2) A workplace agreement comes into operation even if the requirements in Divisions 3, 4 and 7 have not been met in relation to the agreement.

(3) A multiple-business agreement comes into operation only if it has been authorised under section 96F.

(4) A workplace agreement ceases to be in operation if:
(a) it is terminated in accordance with Division 9; or
(b) the Court declares it to be void under paragraph 105F(a).

(5) A workplace agreement ceases to be in operation in relation to an employee if it has:
(a) passed its nominal expiry date; and
(b) been replaced by another workplace agreement in relation to that employee.

Note: Part VIA sets out the circumstances in which a workplace agreement binding an employer because of transmission of business will cease to operate.

(6) A multiple-business agreement ceases to operate in relation to a single business (or a part of a single business) if:
(a) the multiple-business agreement came into operation on a particular day; and
(b) an AWA or collective agreement (other than a multiple-business agreement) was lodged on a later day; and
(c) the multiple-business agreement and the AWA or collective agreement apply in relation to the same single business (or the same part of the single business).

Example: Employers A, B and C lodge a multiple-business agreement which has a nominal expiry date 5 years after it is lodged. Six months later employer B lodges a collective agreement that applies in relation to its single business. This means that the multiple-business agreement ceases to operate in relation to that single business.

(7) If a workplace agreement has ceased operating under subsection (4), it can never operate again.

(8) If a workplace agreement has ceased operating in relation to an employee because of subsection (5), the agree-
If a workplace agreement (the first agreement) binding an employee is in operation; and

(b) another workplace agreement (the later agreement) binding the employee is lodged before the nominal expiry date of the first agreement;

the later agreement has no effect in relation to the employee until the nominal expiry date of the first agreement.

Note: After that date, the first agreement ceases operating in relation to the employee (see subsection 100(5)), and the later agreement takes effect in relation to the employee.

Schedule 1, item 71, page 177 (lines 14 to 24), omit section 101A, substitute:

101A Workplace agreement to include anti-discrimination and dispute settlement procedures

(1) A workplace agreement must include procedures for settling disputes (dispute settlement procedures) about matters arising under the agreement between:

(a) the employer; and

(b) the employees whose employment will be subject to the agreement.

(2) If a workplace agreement does not include dispute settlement procedures, the agreement is taken to include the model dispute resolution process mentioned in Part VIIA.

(3) The employer must ensure that the workplace agreement includes the provisions relating to discrimination that are prescribed by the regulations. If the workplace agreement does not include those provisions, the workplace agreement is taken to include those provisions.

Schedule 1, item 71, page 177 (line 25) to page 179 (line 6), omit section 101B, substitute:

101B No-disadvantage test

(1) In this section:

designated award, in relation to a person to whom a workplace agreement will apply, means an award that the Employment Advocate or the Commissioner has determined under subsection (5) to be appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

relevant award, in relation to a person to whom an agreement will apply, means an award:

(a) regulating any term or condition of employment of persons engaged in
the same kind of work as that of the person under the agreement; and
(b) that, immediately before the initial day of the agreement, is binding on the person’s employer.

(2) A workplace agreement must not disadvantage employees in relation to their terms and conditions of employment.

(3) An agreement disadvantages employees in relation to their terms and conditions of employment only if its operation would result, on balance, in a reduction in the overall terms and conditions of employment of those employees under:
(a) relevant awards or designated awards; and
(b) any law of the Commonwealth, or of a State or Territory, that the Employment Advocate or the Commission (as the case may be) considers relevant.

(4) If:
(a) an employer proposes to make a workplace agreement with a person; and
(b) there is no relevant award in relation to the person;
the employer must apply in writing to the Employment Advocate for the making of a determination under subsection (5) or (6).

(5) Upon application, the Employment Advocate must determine, and inform the employer in writing, that an award or awards are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

(6) For the purposes of subsection (4), the Employment Advocate must determine:
(a) an award or awards under this Act regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the agreement; or
(b) if the Employment Advocate is satisfied that there is no such award under this Act—a State award or State awards regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the agreement.

(48) Schedule 1, item 71, page 179 (line 7) to page 180 (line 18), omit section 101C, substitute:

101C Calling up content of other documents

(1) A workplace agreement may incorporate by reference terms from a workplace agreement or an award.

(49) Schedule 1, item 71, page 180 (lines 20 to 22), omit section 101D, substitute:

101D Prohibited content

(1) An agreement must not contain terms that discriminate against an employee whose employment will be subject to the agreement, because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

(2) For the purposes of subsection (1), a provision of an agreement does not discriminate against an employee merely because:
(a) it provides for a junior rate of pay; or
(b) it provides:
(i) for a rate of pay worked out by applying (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or
(ii) for different rates of pay for adult and non-adult employees participating in an apprenticeship, cadetship or other similar
work-based training arrangement; or

(c) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or

(d) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:

(i) on the basis of those teachings or beliefs; and

(ii) in good faith.

(3) The employer must ensure that the workplace agreement does not include any provisions that prohibit or restrict disclosure of details of the agreement by either party to another person.

(51) Schedule 1, item 71, page 202 (line 30), omit paragraph 103R(3)(b).

(52) Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6), substitute:

(6) To avoid doubt, an employer is considered to have applied duress to an employee for the purposes of subsection (5) if the employer requires the employee to make an AWA with the employer as a condition of employment.

(53) Schedule 1, item 71, page 206 (line 26), after paragraph 105d(2)(b), insert:

(ba) for subsection 97BA(3)—60 penalty units;

(bb) for subsection 97BA(5)—60 penalty units;

(54) Schedule 1, item 71, page 211 (line 30) to page 213 (line 5), omit section 106B, substitute:

106B Meaning of pattern bargaining
What is pattern bargaining?

(1) For the purposes of this Part, a course of conduct by a person is pattern bargaining if:

(a) the person is a negotiating party to 2 or more proposed collective agreements; and

(b) the course of conduct involves seeking common wages or conditions of employment for 2 or more of those proposed collective agreements; and

(c) the course of conduct extends beyond a single business.

Exception: terms or conditions determined as national standards

(2) The course of conduct is not pattern bargaining to the extent that the negotiating party is seeking, for 2 or more of the proposed collective agreements, terms or conditions of employment determined by the Full Bench in a decision establishing national standards.

Exception: genuinely trying to reach an agreement for a single business or part of a single business

(3) The course of conduct, to the extent that it relates to a particular single business or part of a single business, is not pattern bargaining if the negotiating party is genuinely trying to reach an agreement for the business or part.

(4) For the purposes of subsection (3), factors relevant to working out whether the negotiating party is genuinely trying to reach an agreement for a single business or part of a single business include (but are not limited to) the following:

(a) demonstrating a preparedness to negotiate an agreement which takes into account the individual circumstances of the business or part; or

(b) demonstrating a preparedness to negotiate a workplace agreement with a nominal expiry date which takes into account the individual circumstances of the business or part; or

(c) negotiating in a manner consistent with wages and conditions of em-
ployment being determined as far as possible by agreement between the employer and its employees at the level of the single business or part; or

(d) agreeing to meet face-to-face at reasonable times proposed by another negotiating party; or

(e) considering and responding to proposals made by another negotiating party within a reasonable time; or

(f) not capriciously adding or withdrawing items for bargaining.

(5) Whenever a person asserts that a person is engaged in pattern bargaining, the person has the burden of proving that subsection (3) does not apply.

Exception: claims seeking equal pay for work of equal value

(6) The course of conduct is not pattern bargaining to the extent that the negotiating party is seeking, for 2 or more of the proposed collective agreements, terms or conditions of employment that are claimed to ensure equal pay for work of equal value.

(7) This section does not affect, and is not affected by, the meaning of the term “genuinely trying to reach an agreement”, or any variant of the term, as used elsewhere in this Act.

(55) Schedule 1, item 71, Division 4, page 240 (line 10) to page 266 (line 22), omit the Division, substitute:

Division 4—Secret ballots on proposed protected action

Subdivision A—General

109 Object of Division and overview of Division

Object

(1) The object of this Division is to establish a transparent process which allows union members directly concerned to choose, by means of a fair and democratic secret ballot, whether to authorise industrial action supporting or advancing claims by unions.

Overview of Division

(2) Under Division 8, industrial action by union members is not protected action unless it has been authorised by:

(a) the relevant union; or

(b) a secret ballot of relevant union members; or

(c) the Commission.

(3) A secret ballot is required if it has been:

(a) requested by a relevant union member; or

(b) ordered by the Commission.

(4) A secret ballot is conducted according to:

(a) the rules of the relevant union; or

(b) if there are no union rules, the model rules established by the Commission;

and, in any case, union rules must be adopted within 9 months of the commencement of this provision.

(5) The rule that industrial action by employees is not protected action unless it has been authorised does not apply to action in response to an employer lockout (see section 170MO).

109A Definitions

In this Division:

ballot order means an order made under section 109H requiring a protected action ballot to be held.

bargaining period has the same meaning as in subsection 170MI(1).

negotiating party has the same meaning as in subsection 170MI(3).

party, in relation to an application for a ballot order, means either of the following:

(a) the applicant;

(b) the employer of the relevant union members.

proposed agreement, in respect of a bargaining period, means the proposed agreement in
respect of whose negotiation the bargaining period has been initiated.

**protected action ballot** means a secret ballot under this Division.

**relevant union**, in relation to proposed industrial action against an employer in respect of a proposed agreement, means any union which is a negotiating party to the agreement.

**relevant union member**, in relation to proposed industrial action against an employer in respect of a proposed agreement, means any member of the relevant union who is employed by the employer and whose employment will be subject to the agreement but does not include a union member who is a party to an AWA whose nominal expiry date has not passed.

**Subdivision B—Authorising protected action**

**109B How is protected action authorised**

Industrial action by employees is not protected action unless it has been authorised by:

(a) the relevant union; or

(b) a secret ballot of relevant union members; or

(c) the Commission.

**109C How and when a union can authorise protected action**

(1) A relevant union may, subject to subsection (3), make a declaration to authorise industrial action by relevant union members as protected action in accordance with its rules, provided that:

(a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:

(i) the date of the declaration; or

(ii) whichever is the last occurring of the nominal expiry dates of those existing agreements; or

(c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MR.

(2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division are completed, during that later period.

(3) If a relevant union does not have in place rules that establish how protected action may be authorised, then protected action requested by a relevant union member may only be authorised according to a secret ballot conducted under the Commission’s model rules according to section 109L.

(4) A relevant union may not authorise protected action under subsection (1) if a secret ballot is required under section 109D.

**109D When is a secret ballot required to authorise protected action**

A secret ballot is required, and no protected action will be otherwise authorised, if it has been:

(a) requested by a relevant union member as provided by the rules; or
(b) ordered by the Commission.

109E Secret ballot may be requested by relevant union member

A relevant union member may, during a bargaining period for the negotiation of a proposed agreement under Division 2 of this Part, request the relevant union to which the member belongs to hold a protected action ballot to determine whether proposed industrial action has the support of the majority of relevant union members.

109F Secret ballot may be ordered by Commission

(1) A party referred to in subsection (2) may, during a bargaining period for the negotiation of a proposed agreement under Division 2 of this Part, apply to the Commission for an order for a ballot to be held to determine whether proposed industrial action has the support of a majority of relevant union members.

Note: For the duration of a bargaining period, see sections 170MK (when it begins) and 170MV (when it ends).

(2) The following parties may apply:

(a) the relevant union to which the relevant union members mentioned in subsection (1) belong; or

(b) any employer or organisation of employers who is a negotiating party to the proposed agreement.

109G Commission must be satisfied of various matters

The Commission may grant an application for a ballot order, but must not grant the application unless it is satisfied that:

(a) any court, judicial inquiry or Royal Commission findings justify such an order; or

(b) any other particular and significant circumstances exist that mean such an order is appropriate.

109H Grant of application—order for ballot to be held

If the Commission grants the application, the Commission must order a protected action ballot to be held by the relevant union.

Note: The Commission may make an order requiring a secret ballot to be held for one or more bargaining periods.

Subdivision C—Conduct and results of protected action ballot

109I Ballot must be secret

A protected action ballot must be a secret ballot.

109J How is a secret ballot to be conducted

(1) Subject to subsection (2), a secret ballot is conducted according to:

(a) the rules of the relevant union; or

(b) if there are no union rules, the model rules established by the Commission.

(2) Before conducting a secret ballot a union must give its relevant union members:

(a) reasonable notice that the secret ballot will be held; and

(b) information as to the matters which are to be dealt with in the proposed agreement and the general nature of the proposed industrial action.

109K Union rules for conduct of secret ballot

(1) A secret ballot is to be conducted according to the rules of the relevant union.

(2) If the relevant union does not have rules in place in accordance with subsection (1) for the conduct of a secret ballot to authorise protected action then the secret ballot is to be conducted in accordance with the model rules established by the Commission under section 109L.
A union must adopt its own rules or the Commission’s model rules within 9 months of the commencement of this Division.

109L Commission model rules for conduct of secret ballot
The Commission must issue model rules for the conduct of secret ballots.

109M Declaration of ballot results
As soon as practicable after the end of the voting, the union must, in writing:
(a) make a declaration of the result of the ballot; and
(b) inform the relevant union members, negotiating parties and the Industrial Registrar of the result.

109N Effect of ballot
(1) Industrial action is authorised under this Division if more than 50% of the votes validly cast were votes approving the action and:
(a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:
(i) the date of the declaration of the results of the ballot; or
(ii) the nominal expiry date of the existing agreement; or
(b) if there are 2 or more existing agreements—the action commences during the 30-day period beginning on whichever is the later of the following:
(i) the date of the declaration of the results of the ballot; or
(ii) the last occurring of the nominal expiry dates of those existing agreements; or
(c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration of the results of the ballot.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MR.

(2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division are completed, during that later period.

(3) The Commission may, by order, extend the 30-day period mentioned in paragraph (1)(a), (b) or (c) by up to 30 days if the employer and the applicant for the ballot order jointly apply to the Commission for the period to be extended.

(4) The Commission must not make an order under subsection (3) extending the 30-day period if that period has been extended previously.

(5) If industrial action commences during the 30-day period, stops and re-starts within a reasonable period after the 30-day period, no new authorisation is required if the industrial action is substantially the same.

(6) Industrial action is taken, for the purposes of this Division, to be duly authorised even though a technical breach has occurred in authorising the industrial action, so long as the person or persons who committed the breach acted in good faith.

Subdivision D—Funding of ballots

109O Liability for cost of ballot

Union member initiated ballot
(1) The relevant union is the party liable for the cost of holding the protected ac-
tion ballot, if a relevant union member initiated that ballot under section 109E.

**Commission ordered ballot**

(2) If the Commission ordered the ballot to be conducted, the applicant for a ballot order is the party liable for the cost of holding the ballot.

(3) Subsections (1) and (2) have effect subject to subsection 109P(3).

**190P Commonwealth has partial liability for cost of ballot**

(1) If:

(a) the liable party notifies the Industrial Registrar of the cost incurred by the relevant union in relation to the holding of the ballot; and

(b) does so within a reasonable time after the completion of the ballot;

the Industrial Registrar must determine how much (if any) of that cost was reasonably and genuinely incurred by the relevant union in holding the ballot. The amount determined by the Industrial Registrar is the *reasonable ballot cost*.

(2) The Commonwealth is liable to pay to the liable party 80% of the reasonable ballot cost.

(3) If the Commonwealth becomes liable to pay to the liable party 80% of the reasonable ballot cost, the liable party for the ballot order is:

(a) to the extent of the Commonwealth’s liability, discharged from liability under section 109O for the cost of holding the ballot; and

(b) liable to pay 20% of the reasonable ballot cost within 30 days after the Industrial Registrar’s determination.

(4) The regulations may prescribe matters to be taken into account by the Industrial Registrar in determining whether costs are reasonable and genuinely incurred.

R(57A) Schedule 1, item 71, page 288 (lines 19 and 20), omit paragraph (e).

(60) Schedule 1, item 112, page 355 (lines 27 and 28), omit “employee’s employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons”; substitute “employee was made redundant for genuine operational reasons”.

(61) Schedule 1, item 113, page 356 (line 8), omit “employer employed”, substitute “employer and any related employers collectively employed”.

(62) Schedule 1, item 113, page 356 (line 21), at the end of subsection 170CE(5F), add:

(c) employers are taken to be related if:

(i) they carry on a business, project or undertaking as a joint venture or common enterprise; or

(ii) they are related corporations within the meaning of the Corporations Act 2001; or

(iii) one supplies labour for use in the other’s business or undertaking, other than as part of a business of supplying labour to employers generally.

(63) Schedule 1, item 115, page 357 (line 11) to page 360 (line 5), omit the item, substitute:

**115 After section 170CEA**

Insert:

**170CEB Dismissal of applications relating to vexatious and frivolous claims**

(1) This section applies if an application is made, or is purported to have been made, under subsection 170CE(1):

(a) on the ground referred to in paragraph 170CE(1)(a); or

(b) on grounds that include that ground.

(2) If the Commission is satisfied that, because of another provision in this Division, the application cannot be made under subsection 170CE(1) on
the ground referred to in paragraph 170CE(1)(a), the Commission must:

(a) if paragraph (1)(a) of this section applies—make an order that the application is not a valid application; or

(b) if paragraph (1)(b) of this section applies—make an order that the application is not a valid application to the extent that it is made on that ground.

Note 1: The Commission is not required to hold a hearing in relation to the making of such an order. See subsection (4).

Note 2: Where the Commission is satisfied that the application can be made, the Commission may continue to deal with the application as provided elsewhere in this Act, including by holding a hearing.

(3) If the Commission is satisfied that the application can be made under subsection 170CE(1), but is frivolous, vexatious or lacking in substance, in relation to the ground referred to in paragraph 170CE(1)(a), the Commission must:

(a) if paragraph (1)(a) of this section applies—make an order dismissing the application; or

(b) if paragraph (1)(b) of this section applies—make an order dismissing the application to the extent that it is made on that ground.

Note 1: The Commission is not required to hold a hearing in relation to the making of such an order. See subsection (4).

Note 2: Where the Commission is satisfied that the application is not frivolous, vexatious or lacking in substance, the Commission may continue to deal with the application as provided elsewhere in this Act, including by holding a hearing.

(4) The Commission is not required to hold a hearing in relation to the making of an order under this section. In deciding whether to hold a hearing, the Commission must take into account the cost that would be caused to the employer’s business by requiring the employer to attend a hearing.

Note: It would be expected that the relative cost of attending a hearing would be greater for a small business employer. Consequently the Commission would be expected to give greater weight to this factor where the employer is a small business.

(5) Before the Commission makes an order under this section in relation to an application, the Commission:

(a) must, by notice in writing to the employee and the employer, invite the employee and the employer to provide, by the time specified in the notice, further information that relates to the application and that is relevant to whether subsection (4) requires the order to be made; or

(b) may invite the employee, in the time specified in the notice, to be heard before the Registrar or Commissioner without the need for the employer to be present, so long as the employer has the right to provide any further information that is relevant to whether this section requires the order to be made; and

(c) must take account of any such information so provided by the employee and/or the employer.

Note: An employer shall not be required to attend before the Commission merely because an election is made by an employee under this section.
(65) Schedule 1, item 115, page 359 (lines 16 to 18), omit “employee’s employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons”, substitute “employee was made redundant for genuine operational reasons”.

(Amendment 66 is an alternative to amendment 59, 64 and 68)

(66) Schedule 1, item 115, page 359 (lines 20 to 23), omit “employee’s employment may have been terminated for genuine operational reasons or for reasons that include genuine operational reasons”, substitute “employee may have been made redundant for genuine operational reasons”.

(70) Schedule 1, page 371 (after line 17), after item 167, insert:

167A After subsection 170MW(2)

Insert:

(2A) Genuinely trying to reach agreement includes bargaining in good faith.

(71) Schedule 1, page 371 (after line 17), after item 167, insert:

167B After subsection 170MW(2)

Insert:

(2B) In considering whether or not a negotiating party has met or is meeting its obligation to genuinely try to reach an agreement with the other negotiating parties, the Commission must consider whether or not the party has bargained or is bargaining in good faith. Bargaining in good faith includes:

(a) agreeing to meet face-to-face at reasonable times proposed by another party;
(b) attending meetings that the party has agreed to attend;
(c) complying with negotiating procedures agreed to by the parties;
(d) disclosing relevant information, subject to appropriate undertakings as to confidentiality, for the purposes of negotiations;
(e) stating a position on matters at issue, and explaining that position;
(f) considering and responding to proposals made by another negotiating party;
(g) adhering to commitments given to another negotiating party or parties in respect of meetings and responses to matters raised during negotiations;
(h) dedicating sufficient resources and personnel to ensure genuine bargaining;
(i) not capriciously adding or withdrawing items for negotiation;
(j) not refusing or failing to negotiate with one or more of the parties;
(k) in or in connection with the negotiations, not refusing or failing to negotiate with a person who is entitled under this Part to represent an employee, or with a person who is a representative chosen by a negotiating party to represent it in the negotiations;
(l) in or in connection with the negotiations, not bargaining with, attempting to bargain with, or making offers to persons other than another negotiating party, about matters which are the subject of the negotiations;
(m) any other matters which the Commission considers relevant.

(72) Schedule 1, item 193, page 403 (line 23) to page 404 (line 11), omit section 208, substitute:

208 Right of entry to investigate breach

Right of entry for breach of Commonwealth industrial law etc.

If a permit holder for an organisation suspects, on reasonable grounds, that a breach has occurred, or is occurring, of:

(a) this Act; or
(b) an AWA; or
(c) an award or collective agreement or an order of the Commission under this Act;

then, for the purpose of investigating the suspected breach, the permit holder may, during working hours, enter premises if:

(d) work is being carried out on the premises by one or more employees who are members of the permit holder’s organisation; and

(e) the suspected breach relates to, or affects, that work or any of those employees.

(73) Schedule 1, item 193, page 412 (lines 7 to 16), omit section 221, substitute:

221 Right of entry to hold discussions with employees

A permit holder for an organisation may enter premises for the purposes of holding discussions with any eligible employees who wish to participate in those discussions. For this purpose, eligible employee means any employee who carries out work on the premises, and is a member of the permit holder’s organisation or is eligible to become a member of that organisation.

Australian Democrat amendments on sheet 4760—

(1) Schedule 1, item 2, page 12 (lines 30 and 31), omit the definition of organisation, substitute:

organisation means an organisation registered under the Registration and Accountability of Organisations Schedule and includes any entity recognised as having the right to represent industrial interests of employees in any of the State Acts identified in paragraph (a) of the definition of State or Territory industrial law immediately before the commencement of Schedule 1 of the Workplace Relations Amendment (Work Choices) Act 2005 which were not registered as employee associations for the purposes of those State Acts.

(2) Schedule 2, item 2, page 660 (after line 28), after paragraph (c) of the definition of State-registered association, insert:

outworker means:

Note: This paragraph applies to the Western Australian Branch of the Australian Medical Association Incorporated as if it were an organisation of employees for the purposes of the Industrial Relations Act 1979 of Western Australia—see section 72B.

(3) Schedule 2, item 2, page 660 (line 28), after “Australia”, insert “and includes an association recognised by that Act”.

Australian Democrat amendments on sheet 4776—

(2) Amendment to Government amendment (164), page 34, Sheet Number PN271, omit subsection 170CE(5E), insert:

(5EA) For the purposes of calculating the number of employees employed by an employer as mentioned in subsection (5E), bodies are taken to be one entity if:

(a) they are related bodies corporate (within the meaning of section 50 of the Corporations Act 2001); or

(b) they carry on a business, project or undertaking as a joint venture or common enterprise.

Australian Democrat amendments on sheet 4762—

(1) Clause 2, page 2 (after table item 4), insert:

4A. Schedule A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence 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.

(2) Schedule 1, item 2, page 13 (after line 6), after the definition of organisation, insert:

outworker means:
(a) a person directly or indirectly engaged to perform work in the textile, clothing and footwear industry and who performs the work in or about a private residence or other premises that are not necessarily the business or commercial premises of anyone who is obliged to pay for the work performed;

(b) a person is an outworker notwithstanding the nature or form of any contractual arrangement under which the person is engaged to perform work;

(c) a person is an outworker notwithstanding that the person performs work as, through or for a business entity of any description.

Note: A business entity includes:
(a) an Australian Business Number;
(b) a company;
(c) a trust;
(d) a business partnership;
(e) a corporation sole.

(3) Schedule 1, item 2, page 17 (after line 2), after the definition of State or Territory industrial law, insert:

State or Territory outworkers industry provision means any provision or entitlement that applies in relation to an outworker, the performance of outwork or the contracting of work in the textile, clothing and footwear industry, and any provision or entitlement which is expressed to have general application to employees insofar as it applies in relation to an outworker, the performance of outwork or the contracting of work, found in:

(a) the Victorian Outworkers (Improved Protection) Act 2003 (including any regulation or other instruments made pursuant to that Act); or

(b) the Industrial Relations Act 1996 of New South Wales (including any regulations or other instruments made pursuant to that Act); or

(c) the Industrial Relations (Ethical Clothing Trades) Act 2001 of New South Wales (including any regulations or other instruments made pursuant to that Act); or

(d) the Industrial Relations Act 1999 of Queensland (including any regulations or other instruments made pursuant to that Act); or

(e) the Fair Work Act 1994 of South Australia (including any regulations or other instruments made pursuant to that Act); or

(f) any other State or Territory industrial law (including any regulation or other instruments made pursuant to any such law) or State or Territory industrial instruments; or

(g) any other document or instrument.

(4) Schedule 1, item 3, page 19 (after line 31), at the end of section 4AA, add:

(5) In this Act employee includes an outworker and an outworker is an employee. A reference to an employee includes a reference to an outworker.

(5) Schedule 1, item 3, page 21 (after line 3), at the end of section 4AB, add:

(4) In this Act a person or entity who directly or indirectly engages an outworker is an employer and the contract between an outworker and a person or entity who directly or indirectly engages him or her is a contract of employment.

(6) Schedule 1, item 3, page 21, (after line 15), at the end of section 4AC, add:

(3) The conditions on or under which an outworker performs work are conditions of employment.

(4) The relationship between an outworker and a person or entity who directly or indirectly engages him or her is an employment relationship.

(7) Schedule 1, item 9, page 26 (after line 8), at the end of section 7C, add:

CHAMBER
(6) Subsection (1) does not apply to a law of a State or Territory insofar as the law is a State or Territory outworkers industry provision.

(8) Schedule 1, item 170, page 385 (line 27), after “award”, insert “including the Clothing Trades Award 1999 as it operates pursuant to Division 1A of Part XVI”.

(9) Schedule 1, item 170, page 385 (after line 30), at the end of paragraph (a) of the definition of applicable provision, add:

(vi) a breach of a provision of Division 1D of Part XVI which provides that a person or entity is liable for unpaid remuneration; and

(10) Schedule 1, item 171, page 389 (after line 3), at the end of section 177AA, add:

(4) Notwithstanding anything contained in subsection (1), (2) or (3), the Textile, Clothing and Footwear Union of Australia has standing to apply for penalties and remedies under this Division in relation to:

(a) a breach of any outworkers industry provision of the Clothing Trades Award 1999;

(b) a breach of a term of the Australian Fair Pay and Conditions Standard when the term applies pursuant to the provisions of section 537H of Division 1A of Part XVI of the Act;

(c) a breach of a provision of Division 1D of Part XVI which provides that a person or entity is liable for unpaid remuneration.

(11) Page 673 (after line 27), after Schedule 3, insert:

Schedule 3A—Outworkers in the textile, clothing and footwear industry

Workplace Relations Act 1996

1 Part XVI

Repeal the Part, substitute:

PART XVI—OUTWORKERS IN THE TEXTILE, CLOTHING AND FOOTWEAR INDUSTRY

2 Section 537

Repeal the section, substitute:

537 Objects of Part

The objects of this Part are to:

(a) ensure that all existing protections for outworkers will be reflected in and provided for by this Act;

(b) eliminate the exploitation of outworkers in the textile, clothing and footwear industry and provide protection for these extremely vulnerable workers; and

(c) provide for consistent rights for outworkers and impose consistent obligations upon those who engage outworkers, irrespective of the form or structure of the particular contractual arrangement by which the work of an outworker is managed or controlled and irrespective of which State or Territory the work is performed in; and

(d) provide for the continuation of existing regulation, inspection and enforcement provisions, right of entry powers and prosecution rights of unions in respect of outworkers; and

(e) prevent the avoidance of obligations to outworkers through non bona fide contractual arrangements by making provision for outworkers to recover unpaid monies from parties in the contractual chain.

537A Application of Part

Without affecting its operation apart from this section, this Part applies to:

(a) a constitutional corporation which wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and

(b) a person or entity who is a party to a contract of service or a contract for services with a constitutional corporation where the person or entity or the constitutional corporation wholly or partly operates or usually
operates in or in connection with the textile, clothing and footwear industry; and

c) a person or entity who directly or indirectly supplies or receives products, materials or labour to or from a constitutional corporation, where the person or entity or the constitutional corporation wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and

d) an outworker who performs work directly or indirectly for a constitutional corporation where the outworker or the constitutional corporation wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and

e) an employer, as described in section 4AB or an employee as described in section 4AA, who wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and

(f) as far as the referral of certain matters to the Parliament of the Commonwealth by the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria permits:

(i) a person or entity who wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry in Victoria; or

(ii) an outworker in Victoria.

537B Effect of Part in relation to other provisions in Act and other Acts

(1) A provision contained in this Part prevails over any other provision of this Act (including any regulations or other instruments) to the extent of any inconsistency.

(3) Those parts of the definition of employee, employer and employment in this Act which relate to an outworker apply in respect of all Commonwealth laws (including regulations and other instruments) which apply to employees, employers or employment.

(4) Those parts of the definition of employee, employer and employment in this Act which relate to an outworker apply in respect of all State and Territory laws (including regulations and other instruments) which apply to employees, employers or employment unless the same kind of provision is contained in a State or Territory outworkers industry provision.

537C Relationship of Part to state laws, awards etc.

An entitlement conferred by this Part or an obligation imposed by this Part does not apply if the same kind of entitlement or obligation is conferred or imposed by a law of a State or Territory outworkers industry provision.

537D Definitions

In this Part:

outworker means:

(a) a person directly or indirectly engaged to perform work in the textile, clothing and footwear industry and who performs the work in or about a private residence or other premises that are not necessarily the business or commercial premises of anyone who is obliged to pay for the work performed;

(b) A person is an outworker notwithstanding the nature or form of any contractual arrangement under which the person is engaged to perform work;

(c) A person is an outworker notwithstanding that the person performs work as, through or for a business entity of any description.
Note: business entity includes
(a) an Australian Business Number
(b) a company;
(c) a trust;
(d) a business partnership;
(e) a corporation sole.

outworker industry provision means any provision or entitlement that applies in relation to an outworker, the performance of outwork or the contracting of work in the textile, clothing and footwear industry, and any provision or entitlement which is expressed to have general application to employees insofar as it applies in relation to an outworker, the performance of outwork or the contracting of work.

Division 1A—Clothing Trades Award 1999

537E Application of Clothing Trades Award

(1) In addition to its operation pursuant to any other provisions of this Act, the provisions of the Federal Clothing Trades Award 1999 as at the date of commencement of this section which are outworker industry provisions, other than clauses 5, 6, 7, 8 and 45, apply to and bind:
(a) all persons and entities to which this Part applies; and
(b) the Textile, Clothing and Footwear Union of Australia and its members.

(2) For the purposes of the provisions of the Clothing Trades Award 1999 in operation pursuant to subsection (1):
employer has the meaning given in section 4AB.

Outworker has the meaning given in section 537D.

work means work in the textile, clothing and footwear industry.

respondent means a person or entity bound by the Clothing Trades Award 1999;

non-respondent means a person or entity not bound by the Clothing Trades Award 1999.

ordinary working week means the hours and days occurring between midnight on Sunday and midnight on Friday.

(3) A person or entity bound by the Clothing Trades Award 1999 must not enter into any contract, agreement, deed, memorandum of understanding or arrangement for the performance of work in the textile, clothing and footwear industry which contains any term or condition which is less favourable than an outworker industry provision of the Clothing Trades Award 1999 in relation to an outworker.

Note: This subsection is a civil penalty provision.

537F Operation of Act in relation to Clothing Trades Award

Without limiting the generality of subsections 537B(1) and (2):
(a) nothing contained in Division 2 or Division 3 of Part VI of this Act shall be taken to limit or alter any outworker industry provision of the Clothing Trades Award 1999; and
(b) the provisions contained in Division 4 of Part VI of this Act do not apply in relation to any outworker industry provision in the Clothing Trades Award 1999;
(c) the provisions contained in Division 5 of Part VI of this Act do not apply in relation to any outworker industry provision in the Clothing Trades Award 1999, except that:
(i) the provisions of subsections 119A(1), (2) and (3) and paragraph (4)(a) apply, however they are not subject to the conditions set out in paragraph 119A(4)(b); and
(ii) the provisions of section 119B apply; and
(d) subsection 121A(1) and paragraphs 
121A(2)(a) and 121A(2)(b) do not 
apply in relation to any outworker 
industry provision in the Clothing 
Trades Award 1999; and

(e) Part VIA of does not apply in rela-
tion to any outworker industry pro-
vision in the Clothing Trades Award 
1999; and

(f) Schedules 13, 14, 15, and 16 do not 
apply in relation to any outworker 
industry provision in the Clothing 
Trades Award 1999; and

(g) Part X does not apply in relation 
to any outworkers industry provi-
sion in the Clothing Trades Award 
1999; and

(h) the Industrial Relations Commission 
may continue to perform any func-
tion required, allowed or permitted 
by the Clothing Trades Award 1999 
notwithstanding any other provision 
of this Act.

537G Relationship between Clothing 
Trades Award 1999 and Australian Fair 
Pay and Conditions Standard

(1) Subject to subsection (2), Parts IA and 
VA do not apply insofar as a person or 
entity is bound by any outworker indus-
try provision of the Clothing Trades 
Award 1999.

(2) In the event that any of the minimum 
entitlements under the Australian Fair 
Pay and Conditions Standard provided 
for in section 89 is more generous to an 
outworker than any corresponding enti-
tlement under an outworker industry 
provision in the Clothing Trades Award 
1999:

(a) an outworker’s entitlement under 
the Clothing Trades Award 1999 
ceases to have effect and the corre-
sponding more generous entitle-
ment under the Australian Fair Pay 
and Conditions Standard has effect; and

(b) a person or entity bound by the 
Clothing Trades Award 1999 which 
otherwise would have been re-
quired to comply with the entitle-
ment under the Clothing Trades 
Award 1999 is required to comply 
with the corresponding more gen-
erous Australian Fair Pay and Con-
ditions Standard; and

(c) a person or entity bound by the 
Clothing Trades Award 1999 must 
not enter into any contract, agree-
ment, deed, memorandum of un-
derstanding or arrangement for the 
performance of work in the textile, 
clothing and footwear industry 
which contains any term or condi-
tion which is less favourable than 
the corresponding more generous 
provision of the Australian Fair Pay 
and Conditions Standard.

Note: This paragraph is a civil penalty 
provision.

(3) In this section, more generous has the 
same meaning as in section 117C.

537H Workplace agreements or AWAs for 
outworkers prohibited

(1) The provisions contained in Part VB of 
this Act insofar as they relate to AWAs 
and ancillary documents do not apply 
in relation to an outworker.

(2) An AWA or ancillary document has no 
effect where it is made with or for an 
outworker.

(3) A person or entity is prohibited from 
making an AWA or ancillary document 
with or for an outworker.

(4) The provisions contained in Part VB of 
this Act insofar as they relate to a work-
place agreement other than a collective 
union agreement do not apply in rela-
tion to an outworker.
(5) A workplace agreement other than a collective union agreement has no effect where it is made with or for an outworker.

(6) A person or entity is prohibited from making a workplace agreement other than a union collective agreement with or for an outworker.

(7) Subsections (3) and (6) above are civil remedy provisions.

537I Misrepresentation about workplace agreements or A WAs to an outworker

(1) In the circumstances set out in subsection (2), a person or entity must not engage in conduct:
   (a) with the intention of giving a second person the impression; or
   (b) reckless as to whether a second person would get the impression;
   that the person or entity, or a third person or entity, is authorised to make a workplace agreement other than a collective union agreement, AWA or ancillary document with an outworker.
   Note: This subsection is a civil penalty provision.

(2) For the purposes of subsection (1), the circumstances are that the first person or entity or the third person or entity knows, or has reasonable grounds to believe that the person or entity is not authorised, or is reckless as to whether the person or entity is authorised, to make a workplace agreement other than a collective union agreement, AWA or ancillary document with an outworker.

Division 1C—Entry and inspection by organisations

537J Entry and inspection by organisations

(1) Part IX (entry and inspection) as in force immediately before the commencement of this Part continues to apply in relation to entry and inspection by an organisation in connection with any person or entity to which this Part applies.

Division 1D—Recovery of unpaid remuneration

537K Definitions

In this Division:

remuneration includes:
   (a) any remuneration or other amount, including commission, payable in relation to work done by an outworker; and
   (b) amounts payable to an outworker in respect of annual leave or long service leave; and
   (c) amounts payable on behalf of an outworker in respect of superannuation contributions; and
   (d) an amount for which an outworker is entitled to be reimbursed or compensated, for an expense incurred or loss sustained by the outworker.

unpaid remuneration claim means a claim for unpaid remuneration under section 537L.

superannuation contributions means contributions to an approved superannuation fund to which an outworker is entitled under any law or industrial instrument.

537L Claims by outworkers for unpaid remuneration

(1) An outworker may make a claim under this section for any unpaid remuneration against the person the outworker believes is his or her employer (the apparent employer) if the employer:
   (a) has not paid the outworker all or any of the remuneration for work done by the outworker for the employer; or
   (b) has not paid all or any of the superannuation contributions payable for
an outworker (the *unpaid remuneration*).

(2) The claim must be made within 6 months after the work is completed.

(3) The claim is to be made by serving a written notice on the apparent employer that:
   (a) claims payment of the unpaid remuneration; and
   (b) sets out the following particulars:
      (i) the name of the outworker;
      (ii) the address at which the outworker may be contacted;
      (iii) a description of the work done;
      (iv) the date on which the work was done;
      (v) the amount of unpaid remuneration claimed in respect of the work, including the amount of superannuation contributions (if any).

(4) The particulars set out in the unpaid remuneration claim must be verified by statutory declaration.

(5) This section applies only in respect of remuneration for work carried out after the commencement of this section.

537M Liability of apparent employer for unpaid remuneration for which an unpaid remuneration claim has been made

(1) Except as provided by subsection (4), an apparent employer served with an unpaid remuneration claim under section 537L is liable (subject to any proceedings as referred to in section 537O) for the amount of unpaid remuneration claimed.

(2) An apparent employer may, within 14 days after being served with an unpaid remuneration claim, refer the claim in accordance with this section to another person the apparent employer knows or has reasonable grounds to believe is the person for whom the work was done (the actual employer).

(3) An apparent employer refers an unpaid remuneration claim in accordance with this section by:
   (a) advising the outworker concerned in writing of the name and address of the actual employer; and
   (b) serving a copy of the claim (a referred claim) on the actual employer.

(4) The apparent employer is not liable for the whole or any part of an amount of unpaid remuneration claimed for which the actual employer served with a referred claim accepts liability in accordance with section 537N.

(5) An apparent employer cannot refer an unpaid remuneration claim under this section to a person that is a business entity owned or managed by the outworker who made the claim.

537N Liability of actual employer for unpaid remuneration for which an unpaid remuneration claim has been made

(1) An actual employer served with a referred claim under section 537M may, within 14 days after the service, accept liability for the whole or any part of the amount of unpaid remuneration claimed by paying it to the outworker concerned, or in the case of superannuation contributions;

(2) An actual employer who accepts liability must serve notice in writing on the apparent employer of that acceptance and of the amount paid.

(3) If the apparent employer has paid to the outworker concerned any part of the amount of unpaid remuneration claimed for which the actual employer served with the referred claim has not accepted liability, the apparent employer may deduct or set-off the amount the apparent employer has paid to the outworker from any amount that the apparent employer owes to the actual employer (whether or not in respect of work the subject of the referred claim).
537O Recovery of amount of unpaid remuneration

(1) Division 1 of Part VIII applies to recovery of an amount payable to or for an outworker from an apparent employer who fails to make a payment in respect of an amount of unpaid remuneration for which the employer is liable under section 537M.

(2) In proceedings referred to in subsection (1), an order for the apparent employer to pay the amount concerned must be made unless the apparent employer proves that the work was not done or that the amount claimed for the work in the unpaid remuneration claim is not the correct amount in respect of the work.

537P Offences relating to unpaid remuneration claims and referred claims

(1) A person must not:

(a) make any statement that the person knows is false or misleading in a material particular in any notice given for the purposes of section 537M or 537N; or

(b) serve a referred claim on a person under section 537M that the person does not know, or have reasonable grounds to believe, is an actual employer.

(2) Subsection (1) is a civil remedy provision.

537Q Effect of sections 537K to 537P

(1) Sections 537K to 537P do not limit or exclude any other rights of recovery of remuneration of an outworker, or any liability of any person with respect to the remuneration of an outworker, whether or not arising under this Act or any other law (including any regulation or other delegated instrument).

(2) Nothing in subsection 537N(3) limits or excludes any right of recovery arising under any other law with respect to any amount of money owed by the apparent employer to the actual employer.

537R Liability of first person for remuneration payable to outworkers of second person

(1) This section applies where:

(a) a person or entity (the first person) has entered into a contract for the carrying out of work by another person (the second person); and

(b) outworkers employed or engaged by the second person are engaged in carrying out the work (the relevant outworkers); and

(c) the work is carried out in connection with a business undertaking of the first person.

(2) The first person is liable for the payment of any remuneration of the relevant outworkers that has not been paid for work done in connection with the contract during any period of the contract unless the first person has a written statement given by the second person under section 537S for that period of the contract.

(3) The first person may withhold any payment due to the second person under the contract until the second person gives a written statement under section 537S for any period up to the date of the statement. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection.

(4) Division 1 of Part VIII applies to the recovery of remuneration payable by the first person under this section as if a reference in those sections to an employer were a reference to the first person.

537RA Prohibition on joinder of parties

Notwithstanding any other provision to the contrary in any other law, in any proceeding under Division 1 Part VIII of this Act for breach of a provision of Division 1D of this Part which provides that a person or entity is liable for unpaid remuneration, the respondent or defendant to the proceeding is pro-
hibited from joining any other party as a respondent or defendant to the proceeding.

537RB Interest on unpaid remuneration

(1) In any proceeding under Division 1 Part VIII of this Act for breach of a provision of Division 1D of this Part which provides that a person or entity is liable for unpaid remuneration, if the Court is satisfied that the person or entity:

(a) had reasonable notice of the claim; and
(b) had no reasonable grounds on which to dispute the claim; and
(c) in the circumstances, should have paid the claim without the need for proceedings being taken to establish the validity of the claim;

despite anything to the contrary in any other law, the Court may order the employer to pay interest to the party bringing the proceeding on top of any other amount to which the outworker is entitled.

(2) The interest must not be greater than the rate fixed under section 2 of the Penalty Interest Rates Act 1983 that applies at the time the Court makes the order.

537S Written statements for the purposes of section 537R

(1) The written statement referred to in section 537R is a statement by the second person that all remuneration payable to relevant outworkers for work under the contract done during that period has been paid.

(2) The regulations may prescribe the form and content of the written statement.

(3) The second person must keep a copy of any written statement under this section for at least 6 years after it is given.

(4) The written statement is not effective to relieve the first person of liability under section 537R if the first person, when given the statement, had reason to believe it was false.

(5) The second person must not give the first person a written statement knowing it to be false.

(6) Subsection (5) is a civil remedy provision.

537T Operation of section 537R

(1) Section 537R does not apply in relation to a contract if the second person is in receivership or in the course of being wound up or, in the case of an individual, is bankrupt, and if payments made under the contract are made to the receiver, liquidator or trustee in bankruptcy.

(2) Nothing in section 537R or this section limits or excludes any other rights of recovery of remuneration of an outworker, or any liability of any person with respect to the remuneration of an outworker, whether or not arising under this Act or any other law including any regulation or delegated instrument.

(3) The first person is not excluded from liability for the payment of any remuneration of a relevant outworker under section 537R only because the second person is a business entity owned or managed by the relevant outworker.

Division 1E—Contravention of civil remedy provisions

Note: For other rules about civil remedy provisions, see Division 4 of Part VIII.

Subdivision A—General

537U General powers of Court not affected by this Division

This Division does not affect the following:

(a) the powers of the Court under Part XIV;
(b) any other powers of the Court.

537V Standing for civil remedies

(1) Any of the following persons may apply to the Court for an order under this Division in relation to a civil remedy provision in this Part:

(a) an outworker;
(b) the Textile, Clothing and Footwear Union of Australia;
(c) a workplace inspector;
(d) a person or entity who receives a notice given under section 537M or 537N, but only in respect of section 537P;
(e) a person or entity who receives a referred claim pursuant to section 537M, but only in respect of section 537P;
(f) a person or entity who relies upon a written statement provided in accordance with sections 537R and 537S, but only in respect of subsection 537S(5).

(2) The civil remedy provisions in this Part are as follows:
(a) subsection 537E(3);
(b) paragraph 537G(2)(c);
(c) subsection 537H(3);
(d) subsection 537H(6);
(e) subsection 537I(1);
(f) paragraph 537P(1)(a);
(g) paragraph 537P(1)(b);
(h) subsection 537S(5).

Subdivision B—Pecuniary penalties and other remedies for contravention of civil remedy provisions
537W Application of Subdivision
This Subdivision applies to a contravention by a person of a civil remedy provision in this Part.

537X Court may order pecuniary penalty
(1) The Court may order a person who contravenes a civil remedy provision to pay a pecuniary penalty of up to:
(a) if the person is an individual—the maximum number of penalty units specified in subsection (2); or
(b) if the person is a body corporate—5 times the maximum number of penalty units specified in subsection (2).

(2) The maximum number of penalty units is as follows:
(a) subsection 537E(3)—60 penalty units;
(b) subparagraph 537G(2)(c)—60 penalty units;
(c) subsection 537H(3)—60 penalty units;
(d) subsection 537H(6)—60 penalty units;
(e) subsection 537I(1)—60 penalty units;
(f) paragraph 637P(1)(a)—60 penalty units;
(g) paragraph 537P(1)(b)—60 penalty units;
(h) subsection 537S(5)—60 penalty units.

537Y Other powers of Court when dealing with a civil remedy provision
In addition to the powers set out in section 537X, the Court may:
(a) declare a term or the terms of any agreement void;
(b) vary a term or terms of any agreement;
(c) order that compensation of such amount as the Court considers appropriate for any loss or damage resulting from the breach of the agreement be paid to the party bringing the proceeding;
(d) grant an injunction requiring the person mentioned in section 537W to cease contravening (or not to contravene) the civil remedy provision.

Australian Democrat amendments on sheet 4759—
(1) Page 3 (after line 8), after clause 3, add:

4 Accountability for advertising expenditure
(1) Money must not be expended for any advertising project in relation to workplace relations or any like-program established under this Act, where the cost
of the project is estimated or contracted to be $100,000 or more, unless a statement has been presented to the Senate in accordance with this section.

(2) The statement must be presented by the minister to the Senate or, if the Senate is not sitting when the statement is ready for presentation, to the President of the Senate in accordance with the procedures of the Senate.

(3) The statement must indicate in relation to the proposed project:
   (a) the purpose and nature of the project; and
   (b) the intended recipients of the information to be communicated by the project; and
   (c) who authorised the project; and
   (d) the manner in which the project is to be carried out; and
   (e) who is to carry out the project; and
   (f) whether the project is to be carried out under a contract; and
   (g) whether such contract was let by tender; and
   (h) the estimated or contracted cost of the project; and
   (i) whether every part of the project conforms with the Audit and JCPAA guidelines; and
   (j) if the project in any part does not conform with those guidelines, the extent of, and reasons for, the non-conformity.


The CHAIRMAN—The question is that the remaining Australian Green amendments on sheet 4766 revised be agreed to.

Australian Greens amendments on sheet 4766 Revised—

(6) Schedule 1, item 43, page 58 (line 8), after “agreements”, insert “and ensure their compliance with this Act”.

(7) Schedule 1, item 71, page 121 (line 2) to page 160 (line 3), Part VA, Division 6, omit “paternity” (wherever occurring), substitute “partner”.

(8) Schedule 1, item 71, page 123 (after line 24), after the definition of primary care giver, insert:

   same-sex partner, of an employee, means a person with whom the employee is living as a couple on a genuine domestic basis.

(9) Schedule 1, item 71, page 123 (line 31) to page 124 (line 2), omit the definition of spouse, substitute:

   spouse includes the following:
   (a) a former spouse;
   (b) a de facto spouse;
   (c) a former de facto spouse;
   (d) a same-sex partner;
   (e) a former same-sex partner.

(10) Schedule 1, item 71, page 138 (lines 19 to 27), omit “a male employee” (twice occurring), substitute “an employee”.

(11) Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6).

(17) Schedule 2, item 2, page 661 (after line 7), after Clause 1, insert:

1A Automatic transitional registration

A State-registered association, registered in accordance with the requirements of the State in which the association was registered at the time of the commencement of this Schedule which complies with Clause 2 of this Schedule, is deemed to be transitionally registered.

(18) Schedule 2, item 2, page 661 (line 9), omit “A”, substitute “In the event that registration
does not occur in accordance with Clause 1A, a”.

Question negatived.

The CHAIRMAN—The question is that the remaining Family First Party amendments on sheet 4744 revised be agreed to.

*Family First Party amendments on sheet 4744 Revised—*

R(2) Schedule 1, item 71, page 102 (line 7), omit “the employment period”, substitute “a period of one month or such longer period as may be agreed to in writing between the employee and the employer”.

R(3A) Schedule 1, item 71, page 163 (after line 9), after section 96B, insert:

96BA Where employers and employees recognise a union for collective bargaining

(1) Where a union applies to an employer for recognition by the employer for the purpose of collective bargaining on behalf of employees of the employer, an employer may, subject this section, recognise the union for that purpose.

(2) Where a union applies for recognition in accordance with subsection (1), the following conditions must be met:

(a) subject to paragraph (b), more than 50% of employees must be members of the union;

(b) if less than 50% of employees are members of the union then a ballot for applying for recognition must be conducted by an authorised ballot agent;

(c) where a ballot is held in accordance with paragraph (b), recognition is achieved if:

(i) a majority of employee union members voting vote in favour of recognition; and

(ii) not less than 40% of all employees of the employer vote in favour of recognition;

(3) before a ballot may be held in accordance with paragraph (b):

(a) the union must have not less than 10% membership amongst employees; and

(b) there must be an expectation that a majority of employees will vote in favour of recognition of the union as the bargaining agent.

(4) Where a union is recognised in accordance with this section, the union has exclusive rights to bargain on behalf of all employees.

(5) A union may not be recognised for the purposes of this section in relation to an employer with 20 employees or less.

(6) Where a union applies for recognition in accordance with this section and is unsuccessful, the union may not make a further application for recognition until after the expiration of 3 years from the date of the unsuccessful application.

(7) Where two or more unions apply separately for recognition to represent the same group of employees in accordance with this section, the unions have an obligation to cooperate with each other.

(8) Where two or more unions apply separately for recognition to represent the same group of employees in accordance with this section and each of the unions has 10% or more of employees as members, then each application for recognition is invalid.

(5) Schedule 1, item 71, page 180 (lines 20 to 22), omit section 101D, substitute:

101D Prohibited content

For the purposes of this Act, prohibited content is content that:

(a) prohibits AWAs; or

(b) restricts the use of independent contractors or on-hire arrangements; or
(c) allows for industrial action during the term of an agreement; or
(d) provides for trade union training leave or for bargaining fees to be paid to trade unions; or
(e) provides that any future agreement must be a union collective agreement; or
(f) mandates union involvement in dispute resolution.

(6) Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6).
(7) Schedule 1, item 71, page 224 (line 16), omit “contrary to”, substitute “in”.
(8) Schedule 1, item 71, page 226 (line 12), omit “contrary to”, substitute “in”.
(10) Schedule 1, item 71, page 260 (line 1), omit “partial”.
(11) Schedule 1, item 71, page 260 (line 15), omit “80%”, substitute “100%”.
(12) Schedule 1, item 71, page 260 (lines 31 to 33), omit subsection 109ZH(6).
(13) Schedule 1, item 71, page 261 (lines 3 and 4), omit “has the same meaning as in section 109ZG”, substitute:
means:
(a) if the applicant, or one of the applicants, is the authorised ballot agent—the costs incurred by the authorised ballot agent in relation to the holding of the ballot; or
(b) otherwise—the amount the authorised ballot agent charges to the applicant or applicants in relation to the holding of the ballot.
(14) Schedule 1, item 71, page 287 (line 9), omit “operational requirements”, substitute “retrenchment”.
(15) Schedule 1, item 71, page 288 (line 34), omit paragraph 116B(1)(m).
(17) Schedule 1, item 112, page 355 (lines 27 to 29), omit “employee’s employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons”, substitute “employee was retrenched”.

(18) Schedule 1, item 112, page 355 (line 30) to page 356 (line 3), omit subsection 170CE(5D).
(19) Schedule 1, item 113, page 356 (line 8), omit “100”, substitute “20”.
(20) Schedule 1, item 358, page 532 (line 24), omit “operational requirements”, substitute “retrenchment”.
(21) Schedule 1, item 360, page 631 (after line 5), after clause 54, insert:

54A Report by Minister

(1) The Minister must cause to be prepared during the first six months of the fifth year of operation of this Act as amended by the Workplace Relations Amendment (Work Choices) Act 2005, a report detailing the number of unincorporated employers still employing persons under federal awards.

(2) The Minister must table a copy of a report prepared under subsection (1) in each House of the Parliament within 5 sitting days of that House after the day on which the Minister receives the report.

Question negatived.

The CHAIRMAN—The question is that those items and sections of the bill opposed by the Democrats, the Australian Greens and Family First stand as printed.

Australian Democrats amendments on sheet 4765—

(32) Schedule 1, item 71, page 133 (lines 3 to 6), section 94K, TO BE OPPOSED.
(39) Schedule 1, item 71, page 163 (line 28) to page 164 (line 3), omit section 96D, TO BE OPPOSED.
(50) Schedule 1, item 71, page 198 (line 11) to page 199 (line 22), section 103L, TO BE OPPOSED.
(58) Schedule 1, items 81 to 114, page 349 (line 30) to page 357 (line 10), TO BE OPPOSED.
(59) Schedule 1, item 112, page 355 (line 23) to page 356 (line 3), TO BE OPPOSED.
(64) Schedule 1, item 115, page 359 (line 5) to page 360 (line 5), section 170CEE, TO BE OPPOSED.

(67) Schedule 1, items 116 to 166, page 360 (line 6) to page 370 (line 6), TO BE OPPOSED.

(68) Schedule 1, item 122, page 360 (lines 26 to 28), TO BE OPPOSED.

(69) Schedule 1, item 168, page 371 (line 18) to page 385 (line 15), TO BE OPPOSED.

Family First Party amendment on sheet 4744—

(9) Schedule 1, item 71, page 259 (lines 19 to 34), section 109ZG, TO BE OPPOSED.

Question agreed to.

The CHAIRMAN—The question is that the remaining government amendments on sheets PN271 and PJ283 be agreed to.

Government amendments on sheet PN271—

(1) Clause 2, page 2 (after table item 2), insert:

2A. Schedule 1A The day on which this Act receives the Royal Assent.

(2) Clause 2, page 2 (cell at table item 4, 2nd column), omit the cell, substitute:

The day on which this Act receives the Royal Assent.

(3) Clause 2, page 2 (after table item 4), insert:

4A. Schedule 3A The day on which this Act receives the Royal Assent.

(4) Clause 3, page 3 (lines 4 to 8), omit the clause, substitute:

3 Schedule(s)

(1) Each Act, and each set of regulations, 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.

(2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

(8) Schedule 1, item 6, page 22 (after line 10), after section 7, insert:

7AAA Exclusion of persons insufficiently connected with Australia

(1) A provision of this Act prescribed by the regulations does not apply to a person or entity in Australia prescribed by the regulations as a person to whom, or an entity to which, the provision does not apply.

Note 1: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.

Note 2: The regulations may prescribe the person or entity by reference to a class. See subsection 13(3) of the Legislative Instruments Act 2003.

(2) Before the Governor-General makes regulations for the purposes of subsection (1) prescribing either or both of the following:

(a) a provision of this Act that is not to apply to a person or entity;

(b) a person to whom, or an entity to which, a provision of this Act is not to apply;

the Minister must be satisfied that the provision should not apply to the person or entity in Australia because there is not a sufficient connection between the person or entity and Australia.

(3) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.

(22A) Schedule 1, item 15, page 43 (after line 27), at the end of subsection 42(3C), add:
(d) if the party applies to be represented by an agent—whether the agent is a person or body, or an officer or employee of a person or body, that is able to represent the interests of the party under a State or Territory industrial relations law.

(24) Schedule 1, item 43, page 57 (line 17), after “small business)”, insert “and organisations”.

(25) Schedule 1, item 43, page 57 (lines 19 and 20), omit “and employers”, substitute “employers and organisations”.

(26) Schedule 1, item 43, page 57 (line 26), omit “and employers”, substitute “employers and organisations”.

(27) Schedule 1, item 43, page 58 (lines 22 and 23), omit “on the grounds of”, substitute “because of, or for reasons including,”.

(28) Schedule 1, item 71, page 64 (line 28), omit “and VI”, substitute “, VI and VIAAA”.

(29) Schedule 1, item 71, page 65 (after line 23), after subsection 89A(2), insert:

(2A) A dispute about:

(a) whether the Australian Fair Pay and Conditions Standard provides a more favourable outcome for an employee in a particular respect than a workplace agreement that operates in relation to that employee; or

(b) what the outcome is for an employee in a particular respect under the Australian Fair Pay and Conditions Standard, where a workplace agreement operates in relation to that employee;

is to be resolved using the dispute settlement procedure included (or taken to be included) in the agreement.

(30) Schedule 1, item 71, page 65 (line 26), omit “(2)”, substitute “(2) or (2A)”.

(32) Schedule 1, item 71, page 70 (after line 29), after the definition of FMW for an employee in section 90B, insert:

frequency of payment provisions means:

(a) for a pre-reform wage instrument—provisions (whether of that instrument or of another instrument or law), as in force on the reform comparison day, that would have determined the frequency with which an employee covered by the instrument had to be paid; or

(b) for an APCS, a workplace agreement or a contract of employment—provisions of the APCS, workplace agreement or contract that determine the frequency with which an employee covered by the APCS, workplace agreement or contract must be paid.

Note: For a preserved APCS, the frequency of payment provisions will (at least initially) be the frequency of payment provisions (if any) for the pre-reform wage instrument from which the APCS is derived (see paragraph 90ZD(1)(ca)).

(33) Schedule 1, item 71, page 75 (line 16), omit “hour worked (pro-rated for parts of hours worked)”, substitute “of the employee’s guaranteed hours (pro-rated for part hours)”.

(34) Schedule 1, item 71, page 75 (lines 20 and 21), omit the note, substitute:

Note: For what are the employee’s guaranteed hours, see section 90G.

(35) Schedule 1, item 71, page 76 (line 5), omit “hour worked (pro-rated for parts of hours worked)”, substitute “of the employee’s guaranteed hours (pro-rated for part hours)”.

(36) Schedule 1, item 71, page 76 (lines 8 and 9), omit the note, substitute:

Note: For what are the employee’s guaranteed hours, see section 90G.

(37) Schedule 1, item 71, page 76 (line 19), omit “hour worked (pro-rated for parts of hours worked)”, substitute “of the employee’s guaranteed hours (pro-rated for part hours)”.
(38) Schedule 1, item 71, page 76 (lines 22 and 23), omit the note, substitute:

Note: For what are the employee’s guaranteed hours, see section 90G.

(39) Schedule 1, item 71, page 76 (line 24) to page 77 (line 26), omit section 90G, substitute:

90G An employee’s guaranteed hours for the purpose of section 90F

Employees employed to work a specified number of hours

(1) For the purposes of section 90F, if an employee is employed to work a specified number of hours per week, the guaranteed hours for the employee, for each week, are to be worked out as follows:

(a) start with that specified number of hours (subject to subsection (4));

(b) deduct all of the following:

(i) any hours in the week when the employee is absent from work on deductible authorised leave (as defined in subsection (6));

(ii) any hours in the week in relation to which the employer is prohibited by section 114 from making a payment to the employee;

(iii) any other hours of unauthorised absence from work by the employee in the week;

(c) if, during the week, the employee works, and is required or requested to work, additional hours that are, under the terms and conditions of the employee’s employment, not counted towards the specified number of hours—add on those additional hours.

Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 91C or to some other kind of flexible working hours scheme that applies to the employee’s employment.

(2) If an employee is employed on a full-time basis, but the terms and conditions of the employee’s employment do not determine the number of hours in a period that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.

(3) If an employee is employed to work a specified number (the number of non-week specified hours) of hours per period (the non-week period), but that period is not a week (for example, it is a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

\[
\text{Number of non-week specified hours} \times \frac{7}{\text{Number of days in non-week period}}
\]

(4) If:

(a) subsection (1) applies to the employment of an employee to whom a training arrangement applies; and

(b) an APCS includes provisions that determine, in relation to the employee’s employment, that hours attending off-the-job training (including hours attending an educational institution) are hours for which a basic periodic rate of pay is payable; and

(c) the hours that would otherwise be the specified number of hours referred to in subsection (1) for the employee for a week do not include all the hours (the paid training hours) in the week that the APCS so determines are hours for which a basic periodic rate of pay is payable;
subsection (1) applies as if the specified number of hours were increased to such number of hours as includes all the paid training hours.

*Employees not employed to work a specified number of hours*

(5) For the purpose of section 90F, if subsection (1) of this section does not apply to the employment of an employee, the guaranteed hours for the employee are the hours that the employee both is required or requested to work, and does work, for the employer, less any period in relation to which the employer is prohibited by section 114 from making a payment to the employee.

*Definitions*

(6) In this section:

deductible authorised leave means leave, or an absence, whether paid or unpaid, that is authorised:

(a) by an employee’s employer; or
(b) by or under a term or condition of an employee’s employment; or
(c) by or under a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory;

but not including any leave or absence:

(d) that is on a public holiday and that is so authorised because the day is a public holiday; or
(e) any leave or absence that is authorised in order for the employee to attend paid training hours (within the meaning of paragraph (4)(c)) of off-the-job training.

Note: An employee’s guaranteed hours may therefore be a number of hours and part of an hour.

public holiday means:

(a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:

(i) a union picnic day; or
(ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday;

(b) a day that, under (or in accordance with) a law of a State or Territory, or an award or workplace agreement, is substituted for a day referred to in paragraph (a).

(40) Schedule 1, item 71, page 77 (after line 26), at the end of Subdivision B, add:

**90GA Modified operation of section 90F to continue effect of Supported Wage System for certain employees with a disability**

(1) This section applies to the employment of an employee with a disability if:

(a) subsection 90F(1) applies (disregarding this section) to the employment of the employee; and

(b) the APCS that covers the employee’s employment does not determine the basic periodic rate of pay for the employee as a rate that is specific to employees with disabilities; and

(c) the employee is eligible for the Supported Wage System; and

(d) the employee’s employment is covered by a workplace agreement; and

(e) the workplace agreement provides for the payment of a basic periodic rate of pay to the employee at a rate that is not less than the rate (the SWS-compliant rate of pay) set in accordance with the Supported Wage System.

Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision
(2) If this section applies to the employment of the employee, subsection 90F(1) has effect as if the guaranteed basic periodic rate of pay under that subsection for the employment of the employee were instead a rate equal to the SWS-compliant rate of pay.

(41) Schedule 1, item 71, page 78 (lines 4 and 5), omit “collective agreement or an AWA”, substitute “workplace agreement”.

(42) Schedule 1, item 71, page 78 (lines 12 to 27), omit subsection 90H(3), substitute:

(3) The guaranteed casual loading percentage is as set out in the following table:

<table>
<thead>
<tr>
<th>Item</th>
<th>In this situation …</th>
<th>the guaranteed casual loading percentage is …</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>if:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) subsection 90F(1) applies to the employment of the employee; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) the employee’s employment is not covered by a workplace agreement; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) subsection 103R(1) is not operating in relation to the employee’s employment;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the percentage that is the casual loading payable to the employee under casual loading provisions of the APCS referred to in subsection 90F(1).</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>if:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) subsection 90F(1) applies to the employment of the employee; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) the employee’s employment is not covered by a workplace agreement; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) subsection 103R(1) is operating in relation to the employee’s employment;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the higher of:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) the percentage that is the casual loading payable to the employee under casual loading provisions of the APCS referred to in subsection 90F(1); and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) the default casual loading percentage.</td>
<td></td>
</tr>
</tbody>
</table>

(43) Schedule 1, item 71, page 79 (after line 10), after Subdivision C, insert:

Subdivision CA—Guarantee of frequency of payment

90KA The guarantee

APCS applies and contains frequency of payment provisions

(1) If:

(a) the employment of an employee is covered by an APCS; and

(b) the APCS contains frequency of payment provisions that apply in relation to the employee’s employment;

the employer must comply with those provisions in relation to the employee.

APCS applies but does not contain frequency of payment provisions

(2) If:

(a) the employment of an employee is covered by an APCS; but

(b) the APCS does not contain frequency of payment provisions that apply in relation to the employee’s employment;

then:

(c) if a workplace agreement that covers the employment of the employee contains frequency of payment provisions that apply in relation to the employee’s employment—the employer must
comply with those provisions in relation to the employee; or
(d) if paragraph (c) does not apply, and the employee’s contract of employment contains frequency of payment provisions that apply in relation to the employee’s employment—the employer must comply with those provisions in relation to the employee; or
(e) if neither paragraph (c) nor (d) applies—the employer must pay the employee on the basis of fortnightly payments in arrears.

Other situations
(3) If the employment of an employee is not covered by an APCS, then:
(a) if a workplace agreement that covers the employment of the employee contains frequency of payment provisions that apply in relation to the employee’s employment—the employer must comply with those provisions in relation to the employee; or
(b) if paragraph (a) does not apply, and the employee’s contract of employment contains frequency of payment provisions that apply in relation to the employee’s employment—the employer must comply with those provisions in relation to the employee; or
(c) if neither paragraph (a) nor (b) applies—the employer must pay the employee on the basis of fortnightly payments in arrears.

(44) Schedule 1, item 71, page 82 (lines 6 and 7), omit “subsection 90H(3)”, substitute “item 3 of the table in subsection 90H(3)”.  
(45) Schedule 1, item 71, page 86 (line 32), omit “count as”, substitute “are”.
(46) Schedule 1, item 71, page 86 (after line 33), after paragraph 90X(2)(c), insert:
   (ca) frequency of payment provisions; and
(47) Schedule 1, item 71, page 87 (line 1), omit “Rate provisions”, substitute “Subject to subsection 90ZD(3A), rate provisions”.
(48) Schedule 1, item 71, page 91 (after line 15), after paragraph 90ZD(1)(e), insert:
   (ea) any frequency of payment provisions for the instrument; and
(49) Schedule 1, item 71, page 91 (line 19), after “Subject to”, insert “subsection (3A) and”.
(50) Schedule 1, item 71, page 91 (after line 25), after subsection 90ZD(3), insert:
   (3A) If:
      (a) the rate provisions referred to in paragraph (1)(a) include pay increases for particular employees, determined before the reform commencement, that are expressed to take effect at a time or times after the reform commencement; and
      (b) those increases were determined by the Commission, or by a State industrial authority, wholly or partly on the ground of work value change or pay equity;

      then (despite subsection 90X(3)), the preserved APCS is taken to include provisions under which those increases will take effect for those employees at that time or those times.

(51) Schedule 1, item 71, page 97 (line 3), at the end of subsection 90ZN(2), add “, except to the extent that the AFPC is satisfied it is not appropriate to do so because of the effect of subsection 90ZD(3A)”.
(52) Schedule 1, item 71, page 100 (line 4), omit “on the grounds of”, substitute “because of, or for reasons including,”.
(53) Schedule 1, item 71, page 101 (line 18), after “required”, insert “or requested”.
(54) Schedule 1, item 71, page 101 (lines 20 and 21), omit paragraph 91C(1)(a), substitute:
   (a) either:
      (i) 38 hours per week; or
      (ii) subject to subsection (3), if the employee and the employer agree
in writing that the employee’s hours of work are to be averaged over a specified averaging period that is no longer than 12 months—an average of 38 hours per week over that averaging period; and

(55) Schedule 1, item 71, page 101 (line 23), after “work”, insert “less than 38 hours per week, or”.

(56) Schedule 1, item 71, page 101 (line 25), omit “applicable”.

(57) Schedule 1, item 71, page 101 (line 26), omit “The requirement”, substitute “A requirement”.

(58) Schedule 1, item 71, page 101 (line 29) to page 102 (line 23), omit subsections 91C(2) to (4), substitute:

Calculating the number of hours worked

(2) For the purposes of paragraph (1)(a), in calculating the number of hours that an employee has worked in a particular week, or the average number of hours that an employee has worked per week over an averaging period, the hours worked by the employee are taken to include any hours of authorised leave taken by the employee during the week, or during that period.

Start of averaging period

(3) For the purpose of subparagraph (1)(a)(ii), if an employee starts to work for an employer after the start of a particular averaging period that applies to the employee, that averaging period is taken, in relation to the employee, not to include the period before the employee started to work for the employer.

(59) Schedule 1, item 71, page 102 (line 26), after “required”, insert “or requested”.

(60) Schedule 1, item 71, page 102 (line 36), after “required”, insert “or requested”.

(61) Schedule 1, item 71, page 103 (line 1), after “requirement”, insert “or request”.

(62) Schedule 1, item 71, page 103 (line 4), omit “hours.”, substitute “hours”.

(63) Schedule 1, item 71, page 103 (after line 4), at the end of subsection 91C(5), add:

(f) whether any of the additional hours are on a public holiday;

(g) the employee’s hours of work over the 4 weeks ending immediately before the employee is required or requested to work the additional hours.

Note: An employee and an employer may agree that the employee may take breaks during any additional hours worked by the employee.

(64) Schedule 1, item 71, page 103 (before line 5), at the end of section 91C, add:

Definition

(6) In this section:

public holiday means:

(a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:

(i) a union picnic day; or

(ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday; or

(b) a day that, under (or in accordance with a procedure under) a law of a State or Territory, or an award or workplace agreement, is substituted for a day referred to in paragraph (a).

(65) Schedule 1, item 71, page 103 (line 29) to page 104 (line 22), omit the definition of nominal hours worked in section 92A, substitute:

nominal hours worked has the meaning given by section 92AA.

Note: See also section 92C.
(67) Schedule 1, item 71, page 104 (line 39), omit “a Sunday or public holiday”, substitute “Sundays and public holidays”.

(68) Schedule 1, item 71, page 105 (after line 2), after section 92A, insert:

92AA Meaning of nominal hours worked

Employees employed to work a specified number of hours

(1) For the purposes of this Division, if an employee is employed by an employer to work a specified number of hours per week, the number of nominal hours worked, by the employee for the employer during a week, is to be worked out as follows:

(a) start with that specified number of hours;

(b) deduct all of the following:

(i) the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave which does not count as service;

(ii) the number of hours (if any) in the week (other than hours mentioned in subparagraph (i)) in relation to which the employer is prohibited by section 114 from making a payment to the employee.

Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 91C or to some other kind of flexible working hours scheme that applies to the employee’s employment.

(2) If an employee is employed on a full-time basis, but the terms and conditions of the employee’s employment do not determine the number of hours in a week that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.

(3) If an employee is employed to work a specified number (the number of non-week specified hours) of hours over a period (the non-week period) that is not a week (for example, a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

\[
\text{Number of non-week specified hours} \times \frac{7}{\frac{\text{Number of days in non-week period}}{7}}
\]

Employees not employed to work a specified number of hours

(4) For the purposes of this Division, if subsection (1) does not apply to the employment of an employee by an employer, the number of nominal hours worked, by the employee for the employer during a week, is the lesser of the following:

(a) the number worked out as follows:

(i) start with the number of hours (if any) in the week that the employee both works, and is required or requested to work, for the employer;

(ii) add the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave that counts as service;

(iii) deduct the number of hours (if any) in the week in relation to which the employer is prohibited by section 114 from making a payment to the employee;

(b) the number of nominal hours the employee would be taken to have worked for the employer under subsection (1) during the week if
the employee were employed to work 38 hours per week.

Definition

(5) In this section:

Hour includes a part of an hour.

Note 1: The regulations may prescribe a different definition of nominal hours worked for piece rate employees (see section 92C).

Note 2: An employee’s hours of work may be varied (by number or time) in accordance with a workplace agreement, award or contract of employment that binds the employee and his or her employer.

Note 3: For whether leave guaranteed under this Part counts as service, see subsections 92I(2) (annual leave), 93T(2) (paid personal leave), 93U(2) (unpaid carer’s leave) and 94ZZB(2) (parental leave).

Note 4: Because of the definition of hour in subsection (5), an employee’s nominal hours worked may be a number of hours and part of an hour.

(69) Schedule 1, item 71, page 106 (after line 30), at the end of subsection 92E(1), add:

Note: If, under this section, an employee forgoes an entitlement to take an amount of annual leave, the employee’s employer may deduct that amount from the amount of accrued annual leave credited to the employee.

(70) Schedule 1, item 71, page 107 (after line 4), at the end of section 92E, add:

(4) If, under this section, an employee forgoes an entitlement to take an amount of annual leave, the employer must, within a reasonable period, give the employee the amount of pay that the employee is entitled to receive in lieu of the amount of annual leave.

(71) Schedule 1, item 71, page 109 (after line 9), at the end of Subdivision C, add:

92HA Annual leave and workers’ compensation

This Division does not apply to the extent that it is inconsistent with a provision of a law of the Commonwealth, a State or a Territory relating to workers’ compensation if the provision would (apart from this Division):

(a) prevent an employee from taking or accruing annual leave during a period while the employee is receiving compensation under such a law; or

(b) restrict the amount of annual leave an employee may take or accrue during such a period.

(72) Schedule 1, item 71, page 110 (lines 27 and 28), omit “medical practitioner”, substitute “registered health practitioner”.

(73) Schedule 1, item 71, page 110 (lines 29 to 31), omit the definition of medical practitioner in section 93A.

(74) Schedule 1, item 71, page 110 (line 32) to page 111 (line 22), omit the definition of nominal hours worked in section 93A, substitute:

nominal hours worked has the meaning given by section 93AA.

Note: See also section 93C.

(75) Schedule 1, item 71, page 111 (after line 27), after the definition of piece rate employee in section 93A, insert:

registered health practitioner means a health practitioner registered, or licensed, as a health practitioner (or as a health practitioner of a particular type) under a law of a State or Territory that provides for the registration or licensing of health practitioners (or health practitioners of that type).

(76) Schedule 1, item 71, page 111 (after line 32), after section 93A, insert:

93AA Meaning of nominal hours worked
Employees employed to work a specified number of hours

(1) For the purposes of this Division, if an employee is employed by an employer to work a specified number of hours per week, the number of nominal hours worked, by the employee for the employer during a week, is to be worked out as follows:

(a) start with that specified number of hours;
(b) deduct all of the following:
   (i) the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave which does not count as service;
   (ii) the number of hours (if any) in the week (other than hours mentioned in subparagraph (i)) in relation to which the employer is prohibited by section 114 from making a payment to the employee.

Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 91C or to some other kind of flexible working hours scheme that applies to the employee’s employment.

(2) If an employee is employed on a full-time basis, but the terms and conditions of the employee’s employment do not determine the number of hours in a week that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.

(3) If an employee is employed to work a specified number (the number of non-week specified hours) of hours over a period (the non-week period) that is not a week (for example, a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

\[
\frac{\text{Number of non-week specified hours}}{\text{Number of days in non-week period}} \times 7
\]

Employees not employed to work a specified number of hours

(4) For the purposes of this Division, if subsection (1) does not apply to the employment of an employee by an employer, the number of nominal hours worked, by the employee for the employer during a week, is the lesser of the following:

(a) the number worked out as follows:
   (i) start with the number of hours (if any) in the week that the employee both works, and is required or requested to work, for the employer;
   (ii) add the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave that counts as service;
   (iii) deduct the number of hours (if any) in the week in relation to which the employer is prohibited by section 114 from making a payment to the employee;

(b) the number of nominal hours the employee would be taken to have worked for the employer under subsection (1) during the week if the employee were employed to work 38 hours per week.

Definition

(5) In this section:

hour includes a part of an hour.
Note 1: The regulations may prescribe a different definition of nominal hours worked for piece rate employees (see section 93C).

Note 2: An employee’s hours of work may be varied (by number or time) in accordance with a workplace agreement, award or contract of employment that binds the employee and his or her employer.

Note 3: For whether leave guaranteed under this Part counts as service, see subsections 92I(2) (annual leave), 93T(2) (paid personal leave), 93U(2) (unpaid carer’s leave) and 94ZZB(2) (parental leave).

Note 4: Because of the definition of hour in subsection (5), an employee’s nominal hours worked may be a number of hours and part of an hour.

(77) Schedule 1, item 71, page 113 (line 35), omit “2 weeks”, substitute “10 days”.

(78) Schedule 1, item 71, page 114 (lines 15 and 16), omit the heading to section 93H, substitute:

93H Paid personal/carer’s leave—workers’ compensation

(79) Schedule 1, item 71, page 114 (line 17), before “An employee”, insert “(1)”.

(80) Schedule 1, item 71, page 114 (after line 21), at the end of section 93H, add:

(2) Subject to subsection (1), this Division does not apply to the extent that it is inconsistent with a provision of a law of the Commonwealth, a State or a Territory relating to workers’ compensation if the provision would (apart from this Division):

(a) prevent an employee from taking or accruing paid personal/carer’s leave during a period while the employee is receiving compensation under such a law; or

(b) restrict the amount of paid personal/carer’s leave an employee may take or accrue during such a period.

(81) Schedule 1, item 71, page 115 (line 8), omit “2 weeks”, substitute “10 days”.

(82) Schedule 1, item 71, page 117 (lines 8 to 25), omit section 93N, substitute:

93N Sick leave—documentary evidence

(1) This section applies if an employer requires an employee of the employer to give the employer documentary evidence in relation to a period of sick leave taken (or to be taken) by the employee.

(2) To be entitled to sick leave during the period, the employee must, in accordance with this section, give the employer a document (the required document) of whichever of the following types applies:

(a) if it is reasonably practicable to do so—a medical certificate from a registered health practitioner;

(b) if it is not reasonably practicable for the employee to give the employer a medical certificate—a statutory declaration made by the employee.

(3) The required document must be given to the employer as soon as reasonably practicable (which may be at a time before or after the sick leave has started).

(4) The required document must include a statement to the effect that:

(a) if the required document is a medical certificate—in the registered health practitioner’s opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or

(b) if the required document is a statutory declaration—the employee was, is, or will be unfit for work during the period because of a personal illness or injury.
(5) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee’s control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

(83) Schedule 1, item 71, page 118 (line 10) to page 119 (line 11), omit section 93P, substitute:

**93P Carer’s leave—documentary evidence**

(1) This section applies if an employer requires an employee of the employer to give the employer documentary evidence in relation to a period of carer’s leave taken (or to be taken) by the employee to provide care or support to a member of the employee’s immediate family or a member of the employee’s household.

(2) To be entitled to carer’s leave during the period, the employee must, in accordance with this section, give the employer a document (the relevant document) that is:

(a) if the care or support is required because of a personal illness, or injury, of the member—a medical certificate from a registered health practitioner, or a statutory declaration made by the employee; or

(b) if the care or support is required because of an unexpected emergency affecting the member—a statutory declaration made by the employee.

(3) The relevant document must be given to the employer as soon as reasonably practicable (which may be at a time before or after the carer’s leave has started).

(4) If the relevant document is a medical certificate, it must include a statement to the effect that, in the opinion of the registered health practitioner, the member had, has, or will have a personal illness or injury during the period.

(5) If the relevant document is a statutory declaration, it must include a statement to the effect that the employee requires (or required) leave during the period to provide care or support to the member because the member requires (or required) care or support during the period because of:

(a) a personal illness, or injury, of the member; or

(b) an unexpected emergency affecting the member.

(6) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee’s control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

(84) Schedule 1, item 71, page 119 (lines 23 to 33), omit subsection 93Q(2) (not including the note), substitute:

(2) Subject to this Subdivision, an employee is entitled to a period of 2 days of compassionate leave for each occasion (a permissible occasion) when a member of the employee’s immediate family or a member of the employee’s household:

(a) contracts or develops a personal illness that poses a serious threat to his or her life; or

(b) sustains a personal injury that poses a serious threat to his or her life; or

(c) dies.

(3) However, the employee is entitled to compassionate leave only if the employee gives his or her employer any evidence that the employer reasonably requires of the illness, injury or death.

(85) Schedule 1, item 71, page 120 (line 2), before “An employee”, insert “(1)”.

---

**CHAMBER**
(86) Schedule 1, item 71, page 120 (line 3), after “93Q”, insert “for a particular permissible occasion”.

(87) Schedule 1, item 71, page 120 (after line 7), at the end of section 93R, add:

(2) An employee who is entitled to a period of compassionate leave under section 93Q because a member of the employee’s immediate family or a member of the employee’s household has contracted or developed a personal illness, or sustained a personal injury, is entitled to start to take the compassionate leave at any time while the illness or injury persists.

(88) Schedule 1, item 71, page 129 (line 8), omit “(or was)”, substitute “, was, or will be”.

(89) Schedule 1, item 71, page 129 (line 25), omit “(or was)”, substitute “, was, or will be”.

(90) Schedule 1, item 71, page 160 (after line 3), at the end of Part VA, add:

Division 7—Civil remedies

94ZZC Definition

In this Division:

Court means the Federal Court of Australia or the Federal Magistrates Court.

94ZZD Civil remedies

(1) An employer must not contravene a term of the Australian Fair Pay and Conditions Standard contained in Division 3, 4, 5 or 6 of this Part in relation to an employee of the employer to whom that term applies.

(2) Subsection (1) is a civil remedy provision.

(3) The reference in subsection (1) to Division 6 of this Part includes a reference to that Division as it applies because of section 170KB.

94ZZE Standing for civil remedies

(1) Any of the following persons may apply to the Court for an order under this Division in relation to a contravention referred to in subsection 94ZZD(1):

(a) the employee concerned;

(b) an organisation of employees (subject to subsection (2));

(c) a workplace inspector.

(2) An organisation of employees must not apply on behalf of an employee for a remedy under this Division in relation to a contravention unless:

(a) a member of the organisation is employed by the respondent employer; and

(b) the contravention relates to, or affects, the member of the organisation or work carried on by the member for the employer.

94ZZF Court orders

The Court may, on application by a person in accordance with section 94ZZE, make one or more of the following orders in relation to an employer who has contravened a relevant term of the Australian Fair Pay and Conditions Standard:

(a) an order requiring the employer to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;

(b) any other orders (including injunctions) that the Court considers necessary to stop the contravention or rectify its effects.

(91) Schedule 1, item 71, page 160 (after line 12), after the definition of undertakings in section 95, insert:

verified copy , in relation to a document, means a copy that is certified as being a true copy of the document.

(93) Schedule 1, item 71, page 165 (lines 28 and 29), omit subclause (2).

(94) Schedule 1, item 71, page 173 (line 27), after “Divisions 3 and 4”, insert “and section 99”.

(95) Schedule 1, item 71, page 176 (line 20), omit “a greenfields agreement”, substitute “an employer greenfields agreement”.

CHAMBER
(96) Schedule 1, item 71, page 177 (line 3), omit “a greenfields agreement”, substitute “an employer greenfields agreement”.

(97) Schedule 1, item 71, page 178 (after line 3), after subsection 101B(2), insert:

(2A) Despite paragraph (2)(c), those protected award conditions have effect in relation to the employment of that person to the extent that those protected award conditions are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

(98) Schedule 1, item 71, page 178 (after line 24), after paragraph (d) paragraph (a) of the definition of protected allowable award matters in subsection (3), insert:

(da) days to be substituted for, or a procedure for substituting, days referred to in paragraph (d);

(99) Schedule 1, item 71, page 179 (line 3), omit paragraph (a) of the definition of protected award conditions in subsection (3), substitute:

(a) are:

(i) about protected allowable award matters; or

(ii) terms that are incidental to protected allowable award matters and that may be included in an award as permitted by section 116f; or

(iii) machinery provisions that are in respect of protected allowable award matters and that may be included in an award as permitted by section 116f; and

(100) Schedule 1, item 71, page 179 (line 5), omit subparagraph (b)(i) of the definition of protected award conditions in subsection (3), substitute:

(i) matters that are not allowable award matters because of section 116b; or

(101) Schedule 1, item 71, page 179 (lines 25 to 30), omit paragraph 101C(3)(b), substitute:

(b) if the industrial instrument is a workplace agreement—the instrument is binding on the employer in relation to the agreement mentioned in subsection (1) just before that agreement is made.

(102) Schedule 1, item 71, page 185 (lines 23 and 24), omit paragraph 102A(e), substitute:

(e) for an employer greenfields agreement—the time when the variation is approved in accordance with section 102F.

(103) Schedule 1, item 71, page 188 (line 11), at the end of the heading to section 102E, add “or union greenfields agreement”.

(104) Schedule 1, item 71, page 191 (line 27), omit “and Subdivision B of this Division”, substitute “, Subdivision B of this Division and section 102H”.

(105) Schedule 1, item 71, page 191 (after line 28), at the end of section 102M, add:

(3) A variation to a multiple-business agreement comes into operation only if the variation has been authorised under section 96f.

(106) Schedule 1, item 71, page 194 (lines 1 and 2), omit “variation to union collective agreement”, substitute “termination of union collective agreement or union greenfields agreement”.

(107) Schedule 1, item 71, page 197 (line 23), after “lodgment,”, insert “and after the nominal expiry date of the agreement has passed.”;

(108) Schedule 1, item 71, page 198 (line 28), after “lodgment,”, insert “and after the nominal expiry date of the agreement has passed.”;

(109) Schedule 1, item 71, page 202 (line 7), omit “103(2)(a)”, substitute “103(1)(a)”. 

(110) Schedule 1, item 71, page 202 (line 7), after “Subdivision B”, insert “and section 103G”.
(111) Schedule 1, item 71, page 202 (lines 9 and 10), omit “103(2)(b) or (c)”, substitute “103(1)(b)”.  

(112) Schedule 1, item 71, page 202 (line 30), omit paragraph 103R(3)(b), substitute:

(b) an award, except to the extent to which it contains protected award conditions as defined in section 101B (disregarding any exclusion or modification of those conditions made by the agreement that was terminated).

(113) Schedule 1, item 71, page 203 (line 11), after “meaning of”, insert “section”.

(114) Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6), substitute:

(6) To avoid doubt, a person does not apply duress for the purposes of subsection (5) merely because the person requires another person to make an AWA as a condition of engagement.

(115) Schedule 1, item 71, page 209 (after line 15), at the end of Part VB, add:

Division 12—Miscellaneous

105L AWAs with Commonwealth employees

(1) An Agency Head (within the meaning of the Public Service Act 1999) may act on behalf of the Commonwealth in relation to AWAs with persons in the Agency who are engaged under the Public Service Act 1999.

(2) A Secretary of a Department (within the meaning of the Parliamentary Service Act 1999) may act on behalf of the Commonwealth in relation to AWAs with persons in the Department who are engaged under the Parliamentary Service Act 1999.

105M Evidence—verified copies

(1) The Employment Advocate may issue a verified copy of any of the following:

(a) a declaration lodged under subsection 99B(2), 102J(2), 103H(2) or 103N(1) in relation to a workplace agreement;

(b) a document annexed to a declaration mentioned in paragraph (a);

(c) a receipt issued by the Employment Advocate under section 99C, 102K, 103I or 103O in relation to a workplace agreement;

(d) a written notice given by the Employment Advocate under subsection 101H(1) or paragraph 101K(4)(a) in relation to a workplace agreement;

(e) an authorisation granted by the Employment Advocate under section 96F for a workplace agreement that is a multiple-business agreement;

(f) a written advice in relation to a workplace agreement given by the Employment Advocate to an employer for the purposes of paragraph 101E(2)(a).

Note: For the definition of verified copy, see section 95.

(2) The verified copy may only be issued to a person who is or was bound by the workplace agreement to which the verified copy relates.

(3) In the Court and in proceedings in the Court, a verified copy issued by the Employment Advocate under subsection (1) is prima facie evidence of the document of which it is a verified copy.

(4) A document that purports to be a verified copy issued by the Employment Advocate under subsection (1) is taken to be such a copy, unless evidence to the contrary is adduced.

105N Evidence—certificates

(1) The Employment Advocate may issue a certificate stating any one or more of the following in relation to one or more workplace agreements:

(a) that a particular person lodged a particular declaration under subsec-
tion 99B(2), 102J(2), 103H(2) or 103N(1) with the Employment Advocate on a particular day;

(b) if the certificate states that a declaration was lodged with the Employment Advocate as mentioned in paragraph (a)—that a particular document was annexed to the declaration;

(c) that particular declarations lodged with the Employment Advocate as mentioned in paragraph (a) in relation to a particular workplace agreement are the only such declarations that were so lodged in relation to that workplace agreement before a particular day;

(d) if the certificate states that particular documents were annexed to declarations lodged with the Employment Advocate as mentioned in paragraph (b)—that those documents were the only documents annexed to those declarations;

(e) that the Employment Advocate issued a receipt under section 99C, 102K, 103I or 103O to a particular person on a particular day for such a lodgment;

(f) if the certificate states that particular receipts were issued by the Employment Advocate as mentioned in paragraph (e) in relation to a particular workplace agreement—that those receipts were the only receipts so issued in relation to the workplace agreement before a particular day;

(g) that the Employment Advocate gave a particular advice for the purposes of paragraph 101E(2)(a) to a particular person on a particular day;

(h) if the certificate states that particular advices were given by the Employment Advocate as mentioned in paragraph (g) in relation to a particular workplace agreement—that those advices were the only advices so given in relation to the workplace agreement before a particular day;

(i) that the Employment Advocate granted an authorisation under section 96F on a particular day for a particular multiple-business agreement;

(j) if the certificate states that particular authorisations were granted by the Employment Advocate as mentioned in paragraph (i) in relation to a particular workplace agreement—that those authorisations were the only authorisations so granted in relation to the multiple-business agreement before a particular day;

(k) that the Employment Advocate gave a particular notice under sub-section 101H(1) or paragraph 101K(4)(a) on a particular day to a particular employer;

(l) if the certificate states that particular notices were given by the Employment Advocate as mentioned in paragraph (k) in relation to a particular workplace agreement—that those notices were the only notices so given in relation to that workplace agreement before a particular day.

(2) The certificate may only be issued to a person who is or was bound by the workplace agreement or all of the workplace agreements to which the certificate relates.

(3) In the Court and in proceedings in the Court, a certificate issued by the Employment Advocate under subsection (1) is prima facie evidence of the matters stated in the certificate.

(4) A document that purports to be a certificate issued by the Employment Advocate under subsection (1) is taken to
be such a certificate, unless evidence to the contrary is adduced.

105O Regulations relating to workplace agreements

The regulations may make provision in relation to the following matters:

(a) requiring an employer who is bound by a workplace agreement to supply copies of prescribed documents to the employee or employees bound by the workplace agreement;

(b) the qualifications and appointment of bargaining agents;

(c) the required form of workplace agreements (including a requirement that documents be in the English language);

(d) the witnessing of signatures on AWAs;

(e) the signing of workplace agreements by persons bound by those agreements, or representatives of those persons;

(f) the retention by employers of signed workplace agreements (including the manner and period of retention);

(g) prescribing fees for the issue by the Employment Advocate of certificates and verified copies.

Note: See section 359 for the types of sanctions that the regulations may provide for a breach of the regulations.

(116) Schedule 1, item 71, page 211 (line 25), at the end of subsection 106A(3), add “(except to the extent that this would be an expansion of the ordinary meaning of that expression)”.  

(118) Schedule 1, item 71, page 216 (line 27), omit “Agt60”, substitute “96A”.

(119) Schedule 1, item 71, page 218 (line 11), after “negotiating party”, insert “(not being the applicant for the order)”.  

(120) Schedule 1, item 71, page 232 (line 30), after “Engaging in”, insert “or organising”.

(121) Schedule 1, item 71, page 249 (line 20), omit subparagraph 109N(1)(d)(ii), substitute:

(ii) the day on which the ballot is to close, and the time (the voting closing time) on that day by which votes must be received (if the order specifies a postal ballot) or by which votes must be cast (if the order specifies an attendance ballot);

(122) Schedule 1, item 71, page 250 (line 10), after “before”, insert “the voting closing time on”.

(123) Schedule 1, item 71, page 250 (lines 11 to 13), omit subsection 109N(4), substitute:

(4) If the order specifies an attendance ballot as the voting method, then:

(a) votes must be cast before the voting closing time on the day on which the ballot is to close; and

(b) subject to paragraph (a):

(i) the order must specify that the voting must take place during the voters’ meal-time or other breaks, or outside their hours of employment; and

(ii) the order may also specify other rules about the times when voters may vote.

(124) Schedule 1, item 71, page 266 (line 33), omit “affecting the employer”.

(125) Schedule 1, item 71, page 268 (line 5), omit paragraph 110(7)(c), substitute:

(c) any person affected by the industrial action; or

(d) any other person prescribed by the regulations.

(126) Schedule 1, item 71, page 268 (line 16), omit paragraph 110(8)(d), substitute:

(d) any person affected by the industrial action; or

(e) any other person prescribed by the regulations.
(128) Schedule 1, item 71, page 285 (after line 31), after paragraph 116(1)(d), insert:
(da) leave for the purpose of seeking other employment after the giving of a notice of termination by an employer to an employee;

(129) Schedule 1, item 71, page 286 (after line 6), after paragraph 116(1)(e), insert:
(ea) days to be substituted for, or a procedure for substituting, days referred to in paragraph (e);

(130) Schedule 1, item 71, page 287 (line 33), before “Each”, insert “(1)”.

(131) Schedule 1, item 71, page 288 (after line 3), at the end of section 116A, add:
(2) The dispute settling process included in an award may only be used to resolve disputes:
(a) about matters arising under the award; and
(b) between persons bound by the award.

(132) Schedule 1, item 71, page 288 (lines 13 and 14), omit paragraph 116B(1)(b), substitute:
(b) conversion from casual employment to another type of employment;

(133) Schedule 1, item 71, page 288 (line 31), at the end of paragraph 116B(1)(j), add “in the meat industry”.

(134) Schedule 1, item 71, page 288 (line 34), omit paragraph 116B(1)(m).

(135) Schedule 1, item 71, page 289 (after line 5), after subsection 116B(2), insert:
(2A) Paragraph (1)(g) does not limit the operation of paragraph 116(1)(m).

(137) Schedule 1, item 71, page 291 (after line 13), after subsection 116I(2), insert:
(2A) However, to avoid doubt, paragraph 116B(1)(g) does not limit the operation of subsections (1) and (3) to the extent that those subsections relate to the matter referred to in paragraph 116(1)(m).

(138) Schedule 1, item 71, page 294 (line 3), after “a term”, insert “, or more than one term.”.

(139) Schedule 1, item 71, page 294 (after line 24), after subsection 117(3), insert:
(3A) If more than one term of an award is about a matter referred to in subsection (2), then those terms, taken together, constitute the preserved award term of that award about that matter.

(140) Schedule 1, item 71, page 295 (lines 3 and 4), omit paragraph 117(7)(a), substitute:
(a) the matter referred to in paragraph (2)(c) does not include one or both of the following:
(i) special maternity leave (within the meaning of section 94C);
(ii) the entitlement under section 94F to transfer to a safe job or to take paid leave; and

(141) Schedule 1, item 71, page 295 (lines 11 to 13), omit the note, substitute:
Note: The effect of excluding a form of leave or an entitlement in relation to a matter is that the entitlement in relation to that form of leave or matter under the Australian Fair Pay and Conditions Standard will automatically apply.

(142) Schedule 1, item 71, page 302 (line 5), at the end of the note, add “and may bind eligible entities under Division 6A”.

(143) Schedule 1, item 71, page 303 (after line 8), after subsection 118J(4), insert:
Note: An award may also be varied to bind eligible entities and employers under Division 6A.

(144) Schedule 1, item 71, page 304 (line 8), omit “The Commission”, substitute “A Full Bench”.

(145) Schedule 1, item 71, page 304 (line 11), omit “The Commission may establish
principles relating”, substitute “Principles under subsection (1) may relate”.

(146) Schedule 1, item 71, page 304 (line 17), omit “subsections (1) and (2)”, substitute “subsection (1)”.  

(147) Schedule 1, item 71, page 304 (after line 25), at the end of section 118N, add:  

(6) To avoid doubt, principles under subsection (1) must be consistent with, and cannot be such as to over-ride, a provision of this Act that relates to the variation of awards.

(148) Schedule 1, item 71, page 308 (line 14), omit “, employee”.

(149) Schedule 1, item 71, page 308 (line 16), omit “, employee”.

(150) Schedule 1, item 71, page 308 (line 18), omit “, employee”.

(151) Schedule 1, item 71, page 308 (line 23), omit “, employee”.

(152) Schedule 1, item 71, page 310 (after line 11), after note 2, insert:

Note 3: An award may also be varied to bind eligible entities and employers under Division 6A.

(153) Schedule 1, item 71, page 313 (after line 22), after Division 6, insert:

Division 6A—Outworkers

120G Definitions

In this Division:

eligible entity means any of the following entities, other than in the entity’s capacity as an employer:

(a) a constitutional corporation;
(b) the Commonwealth;
(c) a Commonwealth authority;
(d) a body corporate incorporated in a Territory;
(e) a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, in connection with the activity carried on in the Territory.

outworker term means a term of an award that is:

(a) about the matter referred to in paragraph 116(1)(m); or
(b) incidental to such a matter, and included in the award as permitted by section 116I; or
(c) a machinery provision in respect of such a matter included in the award as permitted by section 116I.

120H Outworker terms may bind eligible entities and employers

(1) This section applies to an award made under section 118E or varied under section 118J if the award includes outworker terms.

(2) In addition to the employers, organisations and persons that the award is expressed to bind under section 118I or 118J, as the case requires, the award may be expressed to bind, but only in relation to the outworker terms, an eligible entity or an employer that operates in an industry:

(a) to which the award relates; or
(b) in respect of which the outworker terms are applicable.

120I Binding additional eligible entities and employers

(1) An organisation, an eligible entity or an employer may apply to the Commission for an order varying an award that includes outworker terms to bind an eligible entity or an employer to the award, but only in relation to the outworker terms.

(2) If an application is made under subsection (1), the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award, and any other interested persons and bodies, are made aware of the application.

(3) The Minister may intervene in relation to the application.
If an application is made under subsection (1), the Commission may make the order if it is satisfied that:

(a) the eligible entity or employer operates in an industry to which the award relates; and

(b) the eligible entity or employer is not already bound by an award that includes outworker terms in respect of such an industry in relation to those terms; and

(c) making the order is consistent with the objective of protecting the overall conditions of employment of outworkers.

Schedule 1, item 71, page 318 (after line 11), after the definition of Court in section 122B, insert:

instrument means:

(a) an AWA; or

(b) a collective agreement; or

(c) an award; or

(d) an APCS.

Schedule 1, item 71, page 331 (lines 6 to 13), omit subsection 126A(2), substitute:

(2) Despite section 100B but subject to subsection (3), a collective agreement that is in operation at the time of transmission does not have effect in relation to an employee’s employment while the transmitted award operates, in accordance with subsection 126(1), in relation to that employment.

Note 1: But for subsection (2), section 100B would have the effect that the transmitted award would not have effect in relation to the employee’s employment while a collective agreement operates in relation to that employment.

Note 2: Section 126B modifies the operation of section 100B in relation to AWAs and collective agreements that come into operation after the time of transmission.

Despite subsection 126(1), if the employee agrees that the collective agreement is to operate in relation to that employment:

(a) the collective agreement comes into operation in relation to that employment; and

(b) the transmitted award ceases to be in operation in relation to that employment in accordance with subsection 126B(3).

Schedule 1, item 71, page 336 (lines 32 to 35), omit paragraph 129(3)(f), substitute:

(f) identify:

(i) any provisions of the Australian Fair Pay and Conditions Standard; or

(ii) any other instrument;

that the employer intends to be the source for terms and conditions that will apply to the matters that are dealt with by the transmitted instrument when the transmitted instrument ceases to bind the employer; and

Schedule 1, item 71, page 337 (after line 5), after subsection 129(3), insert:

(3A) Subject to subsection (3B), if the notice under subsection (3) identifies an instrument under paragraph (3)(g), the employer must give the transferring employee a copy of the instrument together with the notice.

Note: This is a civil remedy provision, see section 129C.

(3B) Subsection (3A) does not apply if:

(a) the transferring employee is able to easily access a copy of the instrument in a particular way; and

(b) the notice under subsection (3) tells the transferring employee
that a copy of the instrument is accessible in that way.

Note: Paragraph (a)—the copy may be available, for example, on the Internet.

(158) Schedule 1, item 71, page 337 (lines 7 to 15), omit paragraph 129(4)(a), substitute:

(a) the transmitted instrument is an award and the new employer and the transferring employee become bound by an AWA or a collective agreement at the time of transmission or within 14 days after the time of transmission; or

(159) Schedule 1, item 71, page 339 (line 12), omit paragraph 129C(1)(b), substitute:

(b) subsections 129(2) and (3A);

(161) Schedule 1, item 74, page 344 (lines 25 and 26), omit “orders, determinations or decisions of the AFPC”, substitute “AFPC decisions and the Australian Fair Pay and Conditions Standard”.

(162) Schedule 1, item 74, page 344 (line 29) to page 345 (line 4), omit subsections 170BAC(2) and (3), substitute:

(2) The Commission must not deal with an application for an order under this Division, to the extent to which the application is for an order relating to a basic periodic rate of pay, a basic piece rate of pay or casual loading, if:

(a) the group of employees who would be covered by the order applied for; and

(b) the comparator group of employees;

are both entitled to a rate of pay that is equal to the applicable guaranteed rate of pay under the provisions of the Australian Fair Pay and Conditions Standard contained in Division 2 of Part VA.

(3) To avoid doubt, subsection (2) does not apply if employees in one or both of the groups are entitled to a rate of pay higher than the applicable guaranteed rate.

(4) The Commission must not deal with an application for an order under this Division, to the extent to which the application is for an order relating to a basic periodic rate of pay, a basic piece rate of pay or casual loading, if:

(a) the group of employees who would be covered by the order applied for is entitled to a rate of pay that is higher than the rate of pay the group would be entitled to under the provisions of the Australian Fair Pay and Conditions Standard contained in Division 2 of Part VA; and

(b) the comparator group of employees is entitled to a rate of pay that is equal to the applicable guaranteed rate of pay under the provisions of the Australian Fair Pay and Conditions Standard contained in Division 2 of Part VA.

(5) To avoid doubt, subsection (4) does not apply if the comparator group of employees is entitled to a rate of pay higher than the applicable guaranteed rate.

(6) To avoid doubt, subsections (2) and (4) apply regardless of the source of the employee’s entitlement to be paid the rate of pay.

(7) In this section:

basic periodic rate of pay has the same meaning as in Division 2 of Part VA.

basic piece rate of pay has the same meaning as in Division 2 of Part VA.

casual loading has the same meaning as in Division 2 of Part VA.

comparator group of employees means employees whom the applicant contends are performing work of equal value to the work performed...
by the employees to whom the application relates.

(163) Schedule 1, page 355 (after line 2), after item 105, insert:

**105A After subsection 170CD(1B)**

Insert:

(1C) For the purposes of this Division, the resignation of an employee is taken to constitute the termination of the employment of that employee if the employee can prove, on the balance of probabilities, that the employee did not resign voluntarily but was forced to do so because of conduct, or a course of conduct, engaged in by the employer.

(164) Schedule 1, item 113, page 356 (after line 13), after subsection 170CE(5E), insert:

(5EA) For the purposes of calculating the number of employees employed by an employer as mentioned in subsection (5E), related bodies corporate (within the meaning of section 50 of the Corporations Act 2001) are taken to be one entity.

(165) Schedule 1, item 114, page 357 (lines 4 and 5), omit “that the application is not a valid”, substitute “dismissing the”.

(166) Schedule 1, item 114, page 357 (lines 6 and 7), omit “that the application is not a valid”, substitute “dismissing the”.

(167) Schedule 1, item 114, page 357 (after line 8), after subsection 170CEA(5), insert:

(5A) If:

(a) a respondent has moved for the dismissal of an application to which subsection (5) applies; and

(b) the Commission is not satisfied as mentioned in paragraph (5)(a), (b) or (c) in relation to the application;

the Commission must make an order refusing the motion for dismissal.

(168) Schedule 1, item 114, page 357 (line 10), at the end of subsection 170CEA(6), add “or (5A)”.

(169) Schedule 1, item 115, page 357 (line 20), omit “an”, substitute “the”.

(170) Schedule 1, item 115, page 357 (after line 31), after subsection 170CEB(1), insert:

(1A) If:

(a) an application is made, or purported to have been made, under subsection 170CE(1):

(i) on the ground referred to in paragraph 170CE(1)(a); or

(ii) on grounds that include that ground; and

(b) the respondent moves for dismissal of the application on the ground that it is frivolous, vexatious or lacking in substance; and

(c) the Commission is not satisfied that the application is frivolous, vexatious or lacking in substance, in relation to the ground referred to in paragraph 170CE(1)(a);

the Commission must:

(d) if subparagraph (a)(i) applies— make an order refusing the motion for dismissal; or

(e) if subparagraph (a)(ii) applies— make an order refusing the motion for dismissal, to the extent that the application is made on the ground referred to in paragraph 170CE(1)(a).

(171) Schedule 1, item 115, page 357 (line 33), at the end of subsection 170CEB(2), add “or (1A)”.

(172) Schedule 1, item 115, page 358 (lines 19 and 20), omit “or 170CEB(1)”, substitute “or (5A) or 170CEB(1) or (1A)”.

(173) Schedule 1, item 115, page 359 (line 26), at the end of subsection 170CEE(1), add
“... other than dealing with a matter on the papers as provided by section 170CEA, 170CEB, 170CEC or 170CED”.

174 Schedule 1, item 115, page 359 (lines 30 and 31), omit “that the application is not a valid”, substitute “dismissing the”.

175 Schedule 1, item 115, page 359 (lines 32 and 33), omit “that the application is not a valid”, substitute “dismissing the”.

176 Schedule 1, item 115, page 360 (after line 2), after subsection 170CEE(3), insert:

(3A) To avoid doubt, this section does not require the Commission to hold a hearing in relation to an application that has been dismissed under subsection 170CEA(5) or 170CEB(1).

177 Schedule 1, page 360 (after line 11), after item 118, insert:

118A Paragraph 170CFA(6)(b)

Repeal the paragraph, substitute:

(b) be lodged with the Commission:

(i) if the certificate given by the Commission under subsection 170CF(2) identifies the ground of an alleged contravention of section 170CK as a ground on which conciliation is, or is likely to be, unsuccessful (whether or not one or more other grounds are so identified)—not later than 28 days after the day of issue of the certificate; or

(ii) in any other case—not later than 7 days after the day of issue of the certificate.

178 Schedule 1, item 120, page 360 (lines 16 to 18), omit subsection 170CFA(8), substitute:

(8) The Commission must not, under any provision of this Act, extend the period within which an election is required by subsection (6) to be lodged, other than as mentioned in subsection (8A).

179 Schedule 1, page 362 (after line 34), after item 131, insert:

131A After subsection 170CK(4)

Insert:

(4A) To avoid doubt, if:

(a) an employer terminates an employee’s employment; and

(b) the reason, or a reason, for the termination is that the position held by the employee no longer exists, or will no longer exist; and

(c) the reason, or a reason, that the position held by the employee no longer exists, or will no longer exist, is the employee’s absence, or proposed or probable absence, during maternity leave or other parental leave:

the employee’s employment is taken, for the purposes of paragraph (2)(h), to have been terminated for the reason, or for reasons including the reason, of absence from work during maternity leave or other parental leave.

180 Schedule 1, item 152, page 367 (after line 11), after subsection 170HB(3), insert:

(3A) Without limiting subsection (3), other termination proceedings includes an inquiry in respect of a complaint (the HREOC complaint):

(a) made under the Human Rights and Equal Opportunity Commission Act 1986; and

(b) that relates to the termination of employment of an employee (whether or not as a result of
an amendment of the complaint).

(3B) For the purposes of this section, an employee commences other termination proceedings of a kind referred to in subsection (3A):

(a) unless paragraph (b) applies—when the employee makes the HREOC complaint; or

(b) if the HREOC complaint constitutes, or would constitute, other termination proceedings only as a result of an amendment of the complaint—when the complaint is amended.

(181) Schedule 1, item 153, page 368 (after line 26), at the end of section 170HC, add:

(4) Without limiting subsection (3), other termination proceedings includes an inquiry in respect of a complaint (the HREOC complaint):

(a) made under the Human Rights and Equal Opportunity Commission Act 1986; and

(b) that relates to the termination of employment of an employee (whether or not as a result of an amendment of the complaint).

(5) For the purposes of this section, an employee commences other termination proceedings of a kind referred to in subsection (4):

(a) unless paragraph (b) applies—when the employee makes the HREOC complaint; or

(b) if the HREOC complaint constitutes, or would constitute, other termination proceedings as a result of an amendment of the complaint—when the complaint is amended.

(182) Schedule 1, item 168, page 372 (lines 1 to 3), omit section 172, substitute:

172 Court process
The fact that the model dispute resolution process, an alternative dispute resolution process or any other dispute resolution process applies in relation to a dispute does not affect any right of a party to the dispute to take court action to resolve it.

(183) Schedule 1, item 168, page 372 (lines 5 to 20), omit section 173, substitute:

173 Model dispute resolution process
(1) This Division sets out the model dispute resolution process.

(2) The model dispute resolution process does not apply in relation to a particular dispute, unless it applies in relation to that dispute because of a provision of this Act, other than one contained in this Division, or a term of an award, a workplace agreement or a workplace determination.

Note: The model dispute resolution process applies in relation to a variety of disputes, including:

(a) disputes about entitlements under the Australian Fair Pay and Conditions Standard (see section 89E); and

(b) disputes about the terms of a workplace agreement, where the agreement itself includes the model dispute resolution process or is taken to include that process (see section 101A); and

(c) disputes about the application of a workplace determination (see section 113D); and

(d) disputes about the application of awards (see section 116A); and

(e) disputes under Division 1 of Part VIA, which deals with meal breaks (see section 170AC); and

(f) disputes under Division 1A of Part VIA, which deals with

CHAMBER
public holidays (see section 170AH); and

(g) disputes under Division 5 of Part VIA, which deals with parental leave (see section 170KD).

(184) Schedule 1, item 168, page 375 (lines 14 to 16), omit subsection 176C(1), substitute:

(1) The Commission must refuse to conduct an alternative dispute resolution process under this Division in relation to a matter if:

(a) the dispute is not one that may be resolved using the model dispute resolution process; or

(b) the matter is the subject of proceedings or has already been settled as a result of proceedings, whether before a court or another body, under a law of the Commonwealth or of a State or Territory relating to the prevention of discrimination or to equal opportunity.

(185) Schedule 1, item 168, page 381 (lines 21 and 22), omit paragraph 176L(2)(c), substitute:

(c) be signed by the party to the dispute on that matter or those matters who is making the application; and

(186) Schedule 1, item 168, page 385 (after line 15), at the end of Division 6 of Part VIA, add:

176S Where anti-discrimination or equal opportunity proceedings in progress

A person must not conduct an alternative dispute resolution process in relation to a dispute on a matter if the matter is the subject of proceedings or has already been settled as a result of proceedings, whether before a court or another body, under a law of the Commonwealth or of a State or Territory relating to the prevention of discrimination or to equal opportunity.

(188) Schedule 1, item 171, page 387 (table item 3, 3rd column), after paragraph (d), insert:

(da) if the term is an outworker term (within the meaning of Division 6A of Part VI)—a person or eligible entity (within the meaning of Division 6A of Part VI) that is bound by the award;

(190) Schedule 1, item 171, page 388 (line 1), omit “Note”, substitute “Note 1”.

(191) Schedule 1, item 171, page 388 (after line 4), at the end of subsection 177AA(1), add:

Note 2: An outworker term is a protected award condition under section 101B.

(192) Schedule 1, item 171, page 388 (after line 4), after subsection 177AA(1), insert:

(1A) For the purposes of table items 2, 3, 4, 6, 6A and 7 in subsection (1), a reference to an employee is a reference to an employee who is affected by the breach of the applicable provision.

(1B) For the purposes of table items 3 and 4 in subsection (1), a reference to an employer is a reference to an employer that is affected by the breach of the applicable provision.

(1C) For the purposes of table item 5 in subsection (1), a reference to a person bound by the order is a reference to a person bound by the order who is affected by the breach of the order.

(194) Schedule 1, item 193, page 403 (line 32), at the end of paragraph 208(1)(c), add “or”.

(195) Schedule 1, item 193, page 403 (after line 32), after paragraph 208(1)(c), insert:

(ca) an employee collective agreement, or an employer greenfields agreement, that is binding on an employee who is a member of the permit holder’s organisation;

(196) Schedule 1, item 193, page 411 (lines 12 and 13), omit the definition of employ-
ment record in subsection 218(4), substitute:
employment record means a record relating to the employment of an employee:
(a) that relates to any of the following matters:
   (i) hours of work;
   (ii) overtime;
   (iii) remuneration or other benefits;
   (iv) leave;
   (v) superannuation contributions;
   (vi) termination of employment;
   (vii) type of employment (for example, permanent, temporary, casual, full-time or part-time);
   (viii) personal details of the employee;
   (ix) any other matter prescribed by the regulations; or
(b) that sets out the kind of industrial instrument that regulates the employment of the employee (for example, an AWA, a collective agreement, an award or a contract of employment).

(204) Schedule 1, page 434 (after line 3), at the end of section 253, add:

(7) A person does not contravene subsection (4) because of paragraph 254(1)(i) unless the entitlement described in that paragraph is the sole or dominant reason for the person doing any of the things described in paragraphs (4)(a), (b), (c), (d) and (e) of this section.

(205) Schedule 1, page 454 (lines 20 to 22), omit the item, substitute:

210 Paragraph 353A(1)(a)
Omit "persons under an award, a certified agreement or an AWA", substitute "employees".

210A Subsection 353A(2)
Omit "persons employed under an award, a certified agreement or an AWA to issue pay slips to those persons", substitute "employees to issue pay slips to those employees".

(206) Schedule 1, page 457 (lines 5 and 6), omit the item, substitute:

221 Paragraphs 359(2)(fa) and (g)
Repeal the paragraphs, substitute:

(g) penalties for offences against the regulations, not exceeding 10 penalty units; and

(h) civil penalties for contraventions of the regulations, not exceeding:
   (i) 5 penalty units for an individual; or
   (ii) 25 penalty units for a body corporate.

(207) Schedule 1, page 461 (line 12), omit “7J(2)(d)”, substitute “7J(d)”. 

(208) Schedule 1, page 462 (line 8), omit subparagraph 492(1)(d)(iv), substitute:
(iv) item 3 of the table in subsection 90H(3);

(v) paragraph 90W(2)(b); and

(209) Schedule 1, item 240, page 470 (line 36), at the end of subsection 503(4), add “(except to the extent that this would be an expansion of the ordinary meaning of that expression)".

(211) Schedule 1, item 240, page 475 (after line 18), after Division 8 of Part XV, insert:

Division 8A—Employee records and pay slips

512A Additional effect of Act—employee records and pay slips

Without affecting its operation apart from this section, section 353A also has effect in relation to the employment of any employee in Victoria, and for this purpose:

(a) each reference in that section to an employer (within the meaning of that section) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that section to an employee (within the meaning of that section) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that section to employment (within the meaning of that section) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.

(213) Schedule 1, item 240, page 482 (line 26) to page 483 (line 14), omit section 527, substitute:

527 Additional effect of Act—exclusion of Victorian laws

(1) This Act is intended to apply to the exclusion of all the following laws of Victoria so far as they would otherwise apply in relation to an employee or employer:

(a) a law of Victoria that applies to employment generally and relates to one or more of the following matters:

(i) agreements about matters pertaining to the relationship between an employer or employees in Victoria and an employee or employees in Victoria;

(ii) minimum terms and conditions of employment (other than minimum wages) for employees in Victoria;

(iii) setting and adjusting of minimum wages for employees in Victoria within a work classification;

(iv) termination, or proposed termination, of the employment of an employee in Victoria;

(v) freedom of association;

(b) a law of Victoria that is prescribed by regulations made for the purposes of this paragraph.

Victorian laws that are not excluded

(2) However, subsection (1) does not apply to a law of Victoria so far as:

(a) the law deals with the prevention of discrimination and is neither a State or Territory industrial law nor contained in such a law; or

(b) the law is prescribed by the regulations as a law to which subsection (1) does not apply.

Definitions

(3) In this section:

freedom of association has the same meaning as in subsection 4(6) of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria.

minimum terms and conditions of employment has the same meaning as in subsection 4(4) of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria.
minimum wage has the same meaning as in subsection 4(7) of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria.

work classification has the same meaning as in section 496.

Note: See also clause 87 of Schedule 13 (common rules in Victoria), which has effect despite any other provision of this Act.

(214) Schedule 1, item 287, page 492 (line 5), at the end of subsection 7(3), add “(except to the extent that this would be an expansion of the ordinary meaning of that expression)”. 

(215) Schedule 1, item 289, page 493 (lines 20 and 21), omit paragraphs 18A(3)(b) and (c), substitute:
(b) a person who was an employer when admitted to membership, but who has not resigned or whose membership has not been terminated;
(c) a person (other than an employee) who carries on business;
(d) an officer of the association.

(216) Schedule 1, page 502 (after line 20), after item 313, insert:
313A Subsection 93(1) of Schedule 1B (subparagraph (b)(i) of the definition of constituent part)
Omit “Part 4”, substitute “Part 2”.

313B Subsection 94(1) of Schedule 1B
Omit “Federal Court”, substitute “Commission”.

Note: The heading to section 94 is altered by omitting “Federal Court” and substituting “Commission”.

(217) Schedule 1, page 502 (after line 33), after item 314, insert:
314A Paragraph 94(2)(a) of Schedule 1B
Omit “Court”, substitute “Commission”.

(218) Schedule 1, page 503 (after line 17), after item 317, insert:
317A Paragraph 95(1)(b) of Schedule 1B
Repeal the paragraph, substitute:
(b) address particulars of any proposal by the applicant for the apportionment of the assets and liabilities of the amalgamated organisation and the constituent part; and
(c) address such other matters as are prescribed.

317B Subsection 95(2) of Schedule 1B
Omit “Federal Court”, substitute “Commission”.

317C After subsection 95(3) of Schedule 1B
Insert:
(3A) If the applicant has insufficient information to prepare an outline that complies with subsection (3), the applicant may request the Industrial Registrar to:
(a) give the applicant all information in the possession of the Industrial Registrar that may be relevant in the preparation of the outline; or
(b) direct the amalgamated organisation to give the applicant all information in the possession of the organisation that may be relevant in the preparation of the outline.

(3B) The Industrial Registrar may provide that information, or direct the amalgamated organisation to provide that information.

(3C) The amalgamated organisation must comply with a direction of the Industrial Registrar under subsection (3B).

317D Subsection 95(4) of Schedule 1B
Omit “Federal Court”, substitute “Commission”.
317E Subsection 95(4) of Schedule 1B
Omit “the Court”, substitute “the Commission”.

317F Subsection 96(1) of Schedule 1B
Omit “Federal Court”, substitute “Commission”.

317G Paragraph 96(2)(b) of Schedule 1B
Omit “Court”, substitute “Commission”.

317H Subsection 96(3) of Schedule 1B
Omit “Court”, substitute “Commission”.

317I Subsection 97(1) of Schedule 1B
Omit “Federal Court”, substitute “Commission”.

317J Subsections 97(2) and (3) of Schedule 1B
Omit “Court” (wherever occurring), substitute “Commission”.

317K Subsection 98(1) of Schedule 1B
Omit “Federal Court”, substitute “Commission”.

317L Subsection 98(2) of Schedule 1B
Omit “Court” (wherever occurring), substitute “Commission”.

317M Subsection 99(1) of Schedule 1B
Omit “Registrar of the Federal Court”, substitute “Industrial Registrar”.

317N Subsection 100(1) of Schedule 1B
Omit “Federal Court”, substitute “Commission”.

317O Subsection 100(1) of Schedule 1B
Omit “the Court”, substitute “the Commission”.

317P Subparagraph 100(1)(b)(ii) of Schedule 1B
Omit “prescribed for the purposes of paragraph 95(1)(b)”, substitute “mentioned in paragraph 95(1)(b) or prescribed for the purposes of paragraph 95(1)(c)”.

317Q Subsections 100(2) and (3) of Schedule 1B
Omit “Court”, substitute “Commission”.

317R Paragraph 106(2)(a) of Schedule 1B
Repeal the paragraph.

317S Paragraph 107(1)(a) of Schedule 1B
Repeal the paragraph.

317T Subsection 108(1) of Schedule 1B
Omit “Federal Court”, substitute “Commission”.

317U Subsections 108(1), (2) and (3) of Schedule 1B
Omit “the Court” (wherever occurring), substitute “the Commission”.

317V At the end of Division 2 of Part 3 of Chapter 3 of Schedule 1B
Add:

108A Powers of the Commission to be exercised by President or Full Bench
The powers of the Commission under this Division are exercisable by:
(a) the President; or
(b) if the President directs—a Full Bench of which the President is a member.

(219) Schedule 1, page 503 (after line 23), after item 319, insert:

319A Paragraph 109(2)(c) of Schedule 1B
Repeal the paragraph, substitute:
(c) any proposal for the apportionment of the assets and liabilities of the amalgamated organisation and the constituent part contained in the outline under section 95 relating to the application for the ballot; and
(d) if the constituent part is a separately identifiable constituent part—the proportion of the members of the amalgamated organisation that are included in the constituent part; and
(e) the interests of the creditors of the amalgamated organisation.

319B Subsection 111(2) of Schedule 1B
Omit “the amalgamated organisation” (first occurring), substitute “a Registrar”.

319C Subsection 111(2) of Schedule 1B
Omit all the words after “was”, substitute “a constituent member of the constituent part.”.

319D Paragraph 111(6)(a) of Schedule 1B
After “effect from”, insert “the end of”.

319D Subsection 111(7) of Schedule 1B
Repeal the subsection, substitute:

(7) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that he or she wants to remain a member of the amalgamated organisation, he or she remains a member of the amalgamated organisation.

(7A) If a person referred to in subsection (2) fails to give written notice in accordance with paragraph (3)(b), he or she:

(a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the end of the day after the end of the notice period; and

(b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).

319E Subsection 111(9) of Schedule 1B
Omit “Notwithstanding paragraph (7)(b), if a person to whom that paragraph”, substitute “Despite subsection (7A), if a person to whom that subsection”.

319F Subsection 111(9) of Schedule 1B
Omit all the words after “wishes to”, substitute “remain a member of the amalgamated organisation after the registration of the constituent part as an organisation under section 110, that person remains a member of the amalgamated organisation.”.

(220) Schedule 1, page 511 (after line 17), after item 341, insert:

341A After paragraph 305(2)(b) of Schedule 1B
Insert:

(ba) subsection 95(3C) (direction to provide information);

(221) Schedule 1, page 512 (after line 21), after item 346, insert:

346A After paragraph 324(2)(o) of Schedule 1B
Insert:

(oa) a person who was a party to a proceeding under Part 3 of Chapter 3;

(222) Schedule 1, page 515 (after line 18), after item 348, insert:

348A After paragraph 340(1)(a) of Schedule 1B
Insert:

(aa) matters in relation to which applications are made to the Court under subsection 109(1) (giving effect to withdrawal of constituent part from amalgamated organisation); and

(ab) matters in relation to which applications are made to the Court under subsection 118(2) (giving effect to requirement to take necessary steps in relation to withdrawal from amalgamation); and

(ac) matters in relation to which applications are made to the Court under subsection 125(1) (resolving difficulties in relation to application of Part 3 of Chapter 3 to a matter); and

(ad) matters in relation to which applications are made to the Court under subsection 128(1) (validation of certain acts done for purposes of proposed or completed withdrawal from amalgamation); and

(ae) matters in relation to which applications are made to the Court under subsection 129(1) (invalidity in pro-
posed or completed withdrawal from amalgamation); and

(223) Schedule 1, item 358, page 516 (line 29), omit paragraph 2(e).

(224) Schedule 1, item 359, page 521 (lines 6 to 10), omit all the words from and including “For” to the end of the definition of industrial dispute in subclause 2(1).

(226) Schedule 1, item 359, page 524 (line 36), at the end of subclause 3(3), add “(except to the extent that this would be an expansion of the ordinary meaning of that expression)”:  

(227) Schedule 1, item 359, page 525 (lines 9 to 12), omit all the words from and including “To” to and including “and”, substitute “An award that is continued in force by this clause”.

(228) Schedule 1, item 359, page 525 (lines 15 to 20), omit paragraph 4(2)(b), substitute:

(b) any transitional employer bound by the award under Part 6A of this Schedule (transmission of business);

(229) Schedule 1, item 359, page 525 (after line 25), at the end of subclause 4(2), add:

; (e) each other entity that:

(i) is not an employer within the meaning of subsection 4AB(1) or an eligible entity within the meaning of Division 6A of Part VI; and

(ii) was bound by the award immediately before the reform commencement;

but only in relation to outworker terms.

(230) Schedule 1, item 359, page 525 (line 27), after “employer”, insert “or other entity”.

(231) Schedule 1, item 359, page 525 (line 29), after “employer”, insert “or other entity”.

(232) Schedule 1, item 359, page 525 (line 35), omit “that” (second occurring).

(233) Schedule 1, item 359, page 525 (after line 36), at the end of clause 4, add:

(5) In this clause:

outworker term means a term of a transitional award that is:

(a) about the matter referred to in paragraph 17(1)(q); or

(b) incidental to such a matter, and included in the award as permitted by clause 24; or

(c) a machinery provision in respect of such a matter included in the award as permitted by clause 24.

(234) Schedule 1, item 359, page 528 (line 20), omit “on the grounds of”, substitute “because of, or for reasons including.”.

(235) Schedule 1, item 359, page 531 (after line 18), after paragraph 17(1)(g), insert:

(ga) leave for the purpose of seeking other employment after the giving of a notice of termination by an employer to an employee;

(236) Schedule 1, item 359, page 531 (after line 25), after paragraph 17(1)(i), insert:

(ia) days to be substituted for, or a procedure for substituting, days referred to in paragraph (i);

(237) Schedule 1, item 359, page 533 (lines 14 and 15), omit paragraph 18(1)(b), substitute:

(b) conversion from casual employment to another type of employment;

(238) Schedule 1, item 359, page 533 (line 34), at the end of paragraph 18(1)(j), add “in the meat industry”.

(239) Schedule 1, item 359, page 533 (line 37), omit paragraph 18(1)(m).

(240) Schedule 1, item 359, page 534 (after line 7), after subclause 18(2), insert:

(2A) Paragraph (1)(g) does not limit the operation of paragraph 17(1)(q).

(242) Schedule 1, item 359, page 535 (line 15), after “a term”, insert “, or more than one term,”.

(243) Schedule 1, item 359, page 535 (after line 28), after subclause 22(4), insert:

(4A) If more than one term of a transitional award is about a matter re-
ferred to in subclause (3), then those terms, taken together, constitute the preserved transitional award term of that transitional award about that matter.

(244) Schedule 1, item 359, page 536 (after line 31), after subclause 24(2), insert:

(2A) However, to avoid doubt, paragraph 18(1)(g) does not limit the operation of subclauses (1) and (3) to the extent that those subclauses relate to the matter referred to in paragraph 17(1)(q).

(245) Schedule 1, item 359, page 546 (lines 13 and 14), omit the heading to clause 40, substitute:

40 Principles for varying transitional awards

(246) Schedule 1, item 359, page 546 (line 18), after “established”, insert “under subclause (1)”.

(247) Schedule 1, item 359, page 546 (after line 31), at the end of clause 40, add:

(5) To avoid doubt, principles established under subclause (1) must be consistent with, and cannot be such as to override, a provision of this Act that relates to the variation of transitional awards.

(248) Schedule 1, item 359, page 564 (lines 22 to 27), omit paragraph 69(1)(d), substitute:

(d) any transitional employer bound by the award under Part 6A of this Schedule (transmission of business);

(249) Schedule 1, item 359, page 565 (after line 23), after Part 6, insert:

PART 6A—TRANSMISSION OF TRANSITIONAL AWARDS

Division 1—Introductory

72A Object

The object of this Part is to provide for the transfer of obligations under transitional awards when the whole, or a part, of a transitional employer’s business is transmitted to another transitional employer.

72B Simplified outline

(1) Division 2 describes the transmission of business situation this Part is designed to deal with. It identifies the old transitional employer, the new transitional employer, the business being transferred, the time of transmission and the transferring transitional employees.

(2) Division 3 deals with the transmission of certain transitional awards.

(3) Division 4 deals with notification requirements, the lodgment of notices with the Employment Advocate and the enforcement of the new transitional employer’s obligations by pecuniary penalties.

(4) Division 5 allows regulations to be made to deal with other transmission of business issues in relation to transitional awards.

72C Definitions

In this Part:

business being transferred has the meaning given by subclause 72D(2).

Court means the Federal Court of Australia or the Federal Magistrates Court.

new transitional employer has the meaning given by subclause 72D(1).

old transitional employer has the meaning given by subclause 72D(1).

operational reasons has the meaning given by subsection 170CE(5D).

time of transmission has the meaning given by subclause 72D(3).

transferring transitional employee has the meaning given by clauses 72E and 72F.

transmission period has the meaning given by subclause 72D(4).
Division 2—Application of Part

72D Application of Part

(1) This Part applies if a person (the new transitional employer) becomes the successor, transmittee or assignee of the whole, or a part, of a business of another person (the old transitional employer).

(2) The business, or the part of the business, to which the new transitional employer is successor, transmittee or assignee is the business being transferred for the purposes of this Part.

(3) The time at which the new transitional employer becomes the successor, transmittee or assignee is the time of transmission for the purposes of this Part.

(4) The period of 12 months after the time of transmission is the transmission period for the purposes of this Part.

72E Transferring transitional employees

(1) A person is a transferring transitional employee for the purposes of this Part if:

(a) the person is employed by the old transitional employer immediately before the time of transmission; and

(b) the person’s employment with the old transitional employer is terminated by the old transitional employer before the time of transmission for genuine operational reasons or for reasons that include genuine operational reasons; and

(c) the person becomes employed by the new transitional employer in the business being transferred within 2 months after the time of transmission.

(2) A person is also a transferring transitional employee if:

(a) the person is employed by the old transitional employer at any time within the period of 1 month before the time of transmission; and

(b) when the transferring transitional employee becomes employed by the new transitional employer, the nature of the transferring transitional employee’s employment with the new transitional employer is such that the transitional award is capable of applying to employment of that nature.

72F Transferring transitional employees in relation to particular transitional award

(1) A transferring transitional employee is a transferring transitional employee in relation to a particular transitional award if:

(a) the transitional award applied to the transferring transitional employee’s employment with the old transitional employer immediately before the time of transmission; and

(b) the transitional award is capable of applying to employment of that nature.
employee in relation to the transitional award if:

(a) the transferring transitional employee ceases to be employed by the new transitional employer after the time of transmission; or

(b) the nature of the transferring transitional employee’s employment with the new transitional employer changes so that the transitional award is no longer capable of applying to employment of that nature; or

(c) the transmission period ends.

Division 3—Transmission of transitional award

72G Transmission of transitional award

New transitional employer bound by transitional award

(1) If:

(a) the old transitional employer was, immediately before the time of transmission, bound by a transitional award that regulated the employment of employees of the old transitional employer; and

(b) there is at least one transferring transitional employee in relation to the transitional award; and

(c) but for this clause, the new transitional employer would not be bound by the transitional award in relation to the transferring transitional employees in relation to the transitional award; and

(d) the new transitional employer is a transitional employer at the time of transmission;

the new transitional employer is bound by the transitional award by force of this clause.

Note 1: Paragraph (c)—the transitional award might already bind the new transitional employer, for example, because the new transitional employer happens to be a respondent to the transitional award.

Note 2: The new transitional employer must notify transferring transitional employees and lodge a copy of a notice with the Employment Advocate (see clauses 72J and 72K).

Period for which new transitional employer remains bound

(2) The new transitional employer remains bound by the transitional award, by force of this clause, until whichever of the following first occurs:

(a) the transitional award is revoked;

(b) there cease to be any transferring transitional employees in relation to the transitional award;

(c) the new transitional employer ceases to be bound by the transitional award under Part 5;

(d) the transmission period ends;

(e) the transitional period ends.

New transitional employer bound only in relation to employment of transferring transitional employees

(3) The new transitional employer is bound by the transitional award, by force of this clause, only in relation to the employment of employees who are transferring transitional employees in relation to the transitional award.

Commission order

(4) Subclauses (1) and (2) have effect subject to any order of the Commission.

(5) To avoid doubt, the Commission cannot make an order under subclause (4) that would have the effect of extending the transmission period.

Old transitional employer’s rights and obligations that arose before time of transmission not affected

(6) This clause does not affect the rights and obligations of the old transitional employer.
employer that arose before the time of transmission.

**72H Interaction rules**

**Transmitted award**

(1) This clause applies if subclause 72G(1) applies to a transitional award (the transmitted award).

**Division 3 pre-reform certified agreement**

(2) If:

(a) the new transitional employer is bound by a Division 3 pre-reform certified agreement (within the meaning of Schedule 14); and

(b) a transferring transitional employee in relation to the transmitted award was not bound by that certified agreement immediately before the time of transmission; and

(c) that certified agreement would, but for this subclause, apply to the transferring transitional employee’s employment with the new transitional employer and would prevail over the transmitted award to the extent of any inconsistency with the transmitted award;

the transmitted award, to the extent to which it relates to the transferring transitional employee’s employment with the new transitional employer, prevails over that certified agreement to the extent of any inconsistency with that certified agreement.

(3) Subclause (2) has effect despite section 170LY of the pre-reform Act (as applied by clause 2 of Schedule 14).

**Division 4—Notice requirements and enforcement**

**72J Informing transferring transitional employees about transmitted award**

(1) This clause applies if:

(a) a transitional employer is bound by a transitional award (the transmitted award) in relation to a transferring transitional employee by force of clause 72G; and

(b) a person is a transferring transitional employee in relation to the transmitted award.

(2) Within 28 days after the transferring transitional employee starts being employed by the transitional employer, the transitional employer must take reasonable steps to give the transferring transitional employee a written notice that complies with subclause (3).

Note: This is a civil remedy provision, see clause 72M.

(3) The notice must:

(a) identify the transmitted award; and

(b) state that the transitional employer is bound by the transmitted award; and

(c) specify the date on which the transmission period for the transmitted award ends; and

(d) state that the transitional employer will remain bound by the transmitted award until the end of the transmission period unless the transmitted award is revoked, or otherwise ceases to be in operation, before the end of that period.

**72K Lodging copy of notice with Employment Advocate**

**Only one transferring transitional employee**

(1) If a transitional employer gives a notice under subclause 72J(2) to the only person who is a transferring transitional employee in relation to a transitional award, the transitional employer must lodge a copy of the notice with the Employment Advocate within 14 days after the notice is given to the transferring transitional employee. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 72M.
Note 2: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.

Multiple transferring transitional employees and notices all given on the one day
(2) If:
(a) a transitional employer gives a number of notices under subclause 72J(2) to people who are transferring transitional employees in relation to a transitional award; and
(b) all of those notices are given on the one day;
the transitional employer must lodge a copy of one of those notices with the Employment Advocate within 14 days after that notice is given. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 72M.
Note 2: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.

Lodgment with Employment Advocate
(4) A notice is lodged with the Employment Advocate in accordance with this subclause only if it is actually received by the Employment Advocate.

Note: This means that section 29 of the Acts Interpretation Act 1901 (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

72L Employment Advocate must issue receipt for lodgment
(1) If a notice is lodged under clause 72K, the Employment Advocate must issue a receipt for the lodgment.

(2) The receipt must state that the notice was lodged under clause 72K on a particular day.

(3) The Employment Advocate must give a copy of the receipt to the person who lodged the notice under clause 72K.

72M Civil penalties
(1) The following are civil remedy provisions for the purposes of this section:
(a) subclause 72J(2);
(b) subclauses 72K(1), (2) and (3).

Note: Division 4 of Part VIII contains other provisions relevant to civil remedies.

(2) The Court may order a person who has contravened a civil remedy provision to pay a pecuniary penalty.

(3) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.

(4) An application for an order under subclause (2) in relation to a transitional award may be made by:
(a) a transferring transitional employee; or...
(b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring transitional employee; or

(c) a workplace inspector.

Division 5—Miscellaneous

72N Regulations

The regulations may make provision in relation to the effects that the succession, transmission or assignment of a business, or a part of a business, have on the obligations of transitional employers, and the terms and conditions of transitional employees, under transitional awards.

(250) Schedule 1, item 359, page 567 (lines 15 to 19), omit all the words from and including “For” to the end of the definition of industrial dispute in subclause 75(1).

(251) Schedule 1, item 359, page 568 (after line 11), at the end of clause 77, add:

(3) The regulations may provide that for the purposes of subclause (1):

(a) parental leave does not include one or both of the following:

(i) special maternity leave (within the meaning of section 94C);

(ii) paid leave under subparagraph 94F(2)(b)(i) or (ii); and

(b) personal/carer’s leave does not include one or both of the following:

(i) compassionate leave (within the meaning of section 93Q (as that section applies to an employee in Victoria because of section 492));

(ii) unpaid carer’s leave (within the meaning of section 93D (as that section applies to an employee in Victoria because of section 492)).

(4) Regulations under subclause (3) may be expressed to apply generally or in respect of employees engaged in specified types of employment, such as full-time employment, part-time employment, casual employment, regular part-time employment or shift work.

(252) Schedule 1, item 359, page 575 (line 29), after “100B,”, insert “101B, 103R,”.

(253) Schedule 1, item 359, page 576 (after line 8), at the end of Division 1, add:

Subdivision H—Ceasing to be bound by transitional Victorian reference award

95A Ceasing to be bound by transitional Victorian reference award— inability to resolve industrial dispute under this Schedule

CHAMBER
Clause 59 has effect, in relation to a transitional Victorian reference award, as if the reference in subclause 59(3) to must were read as a reference to may.

(256) Schedule 1, item 359, page 577 (after line 28), at the end of clause 97, add:

(3) In this clause:
personal/carer’s leave includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.

(4) The regulations may provide that for the purposes of subclause (2):
(a) parental leave does not include one or both of the following:
(i) special maternity leave (within the meaning of section 94C);
(ii) paid leave under subparagraph 94F(2)(b)(i) or (ii); and
(b) personal/carer’s leave does not include one or both of the following:
(i) compassionate leave (within the meaning of section 93Q);
(ii) unpaid carer’s leave (within the meaning of section 93D).

(5) Regulations under subclause (4) may be expressed to apply generally or in respect of employees engaged in specified types of employment, such as full-time employment, part-time employment, casual employment, regular part-time employment or shift work.

(257) Schedule 1, item 359, page 580 (after line 27), after Subdivision B, insert:

Subdivision BA—Transmission of business

101A Transmission of business

(1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.

(2) Subclause 72J(3) has effect, in relation to the award, as if the following paragraphs were added at the end:
(e) specify the kinds of instruments (if any) that can replace, or exclude the operation of, the transmitted award; and
(f) set out the source for the terms and conditions that the employer intends to apply to the matters that are dealt with by the transmitted award when the transmitted award ceases to bind the employer; and
(g) identify any collective agreement or award that binds:
(i) the employer; and
(ii) employees of the employer who are not transferring employees in relation to the transmitted award.

(258) Schedule 1, item 359, page 580 (line 34), after “100B,”, insert “101B, 103R,”.

(259) Schedule 1, item 359, page 580 (after line 35), at the end of Division 2, add:

Subdivision D—Ceasing to be bound by transitional award

102A Ceasing to be bound by transitional award— inability to resolve industrial dispute under this Schedule

(1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.

(2) Clause 59 has effect, in relation to the award, as if the reference in subclause 59(3) to must were read as a reference to may.

(260) Schedule 1, item 359, page 581 (before line 3), before clause 103, insert:
**102A Continuation of hearing by Commission**

For the purposes of this Schedule, subsection 34(4) applies as if the reference to any award were a reference to any transitional award.

(261) Schedule 1, item 359, page 581 (after line 8), at the end of clause 103, add:

; and (c) “award or” were omitted from paragraph (4)(c).

(262) Schedule 1, item 359, page 582 (line 14), omit “4A”, substitute “5”.

(263) Schedule 1, item 359, page 582 (after line 30), at the end of clause 107, add:

; and (e) paragraph (da) of table item 3 of subsection 177AA(1) were replaced by the following paragraph:

(da) if the term is an outworker term (within the meaning of subclause 4(5) of Schedule 13)—a person, or an entity referred to in paragraph 4(2)(e) of that Schedule, that is bound by the transitional award;

(264) Schedule 1, item 359, page 582 (before line 31), before clause 108, insert:

**107A Application of provisions of Act relating to freedom of association**

For the purposes of this Schedule, Part XA (Freedom of association) applies, to the extent possible, as if:

(a) a reference to an award were a reference to a transitional award; and

(b) a reference to an employee were a reference to a transitional employee; and

(c) a reference to an employer were a reference to a transitional employer; and

(d) section 241 had not been enacted; and

(e) the following section were inserted after section 244:

**244A Industrial action**

This Part applies to conduct carried out with a purpose or intent relating to a person’s participation or non-participation in industrial action within the meaning of clause 3 of Schedule 13.

**107B Contracts entered into by agents of transitional employees**

For the purposes of this Schedule, section 338 applies, to the extent possible, as if:

(a) a reference to an employee were a reference to a transitional employee; and

(b) a reference to an employer were a reference to a transitional employer; and

(c) a reference to an award were a reference to a transitional award.

**107C Records relating to transitional employees**

For the purposes of this Schedule, section 353A applies, to the extent possible, as if:

(a) a reference to an employee were a reference to a transitional employee; and

(b) a reference to an employer were a reference to a transitional employer; and

(c) a reference to employment were a reference to employment within the meaning of this Schedule.

**107D Interpretation of transitional awards**

For the purposes of this Schedule, section 413 applies as if a reference to an award were a reference to a transitional award.

(265) Schedule 1, item 359, page 582 (line 33), after “matters”, insert “or persons”.

(266) Schedule 1, item 360, page 593 (lines 4 to 6), omit clause 22, substitute:

**22 Application of Part**

This Part applies in relation to a section 170MX award that:

(a) was in force just before the reform commencement; or
(b) was made after the reform commencement because of Part 8 of this Schedule.

(268) Schedule 1, item 360, page 596 (after line 19), at the end of Part 8, add:

32A Approvals of section 170MX awards under pre-reform Act after the reform commencement

(1) This clause applies if the Commission has started to exercise arbitration powers in accordance with subsection 170MX(3) of the pre-reform Act before the reform commencement to make an award under that subsection.

(2) The pre-reform Act continues to apply, despite the repeals and amendments made by the Workplace Relations Amendment (Work Choices) Act 2005, in relation to the making of the award.

(269) Schedule 1, item 360, page 597 (lines 13 to 15), omit the definition of Victorian reference section 170MX award in clause 33 of Schedule 14, substitute:

Victorian reference section 170MX award means a section 170MX award that:

(a) was made before the reform commencement under this Act in its operation in accordance with repealed Division 2 of Part XV; or

(b) was made after the reform commencement because of clause 32A of this Schedule (as that clause applies because of clause 38A of this Schedule).

(270) Schedule 1, item 360, page 598 (after line 23), after clause 38, insert:

38A Approvals of section 170MX awards under pre-reform Act after the reform commencement

Clause 32A has effect, in relation to the making of a section 170MX award under this Act in its operation in accordance with repealed Division 2 of Part XV, as if the reference in subclause 32A(1) to subsection 170MX(3) of the pre-reform Act were read as a reference to that subsection as it had effect because of repealed Division 2 of Part XV.

(271) Schedule 1, item 360, page 599 (after line 17), after the definition of notional agreement preserving State awards in subclause 1(1), insert:

preserved collective State agreement is an agreement that is taken to come into operation under clause 10.

preserved individual State agreement is an agreement that is taken to come into operation under clause 3.

(272) Schedule 1, item 360, page 599 (lines 21 and 22), omit the definition of preserved State agreement in subclause 1(1), substitute:

preserved State agreement means:

(a) a preserved individual State agreement; or

(b) a preserved collective State agreement.

(275) Schedule 1, item 360, page 610 (lines 8 to 16), omit subclause 23(1), substitute:

(1) During the period beginning on the reform commencement day and ending on the nominal expiry date of a preserved collective State agreement, an employee, organisation or officer covered by subclause (2) must not organise or engage in industrial action (whether or not that action relates to a matter dealt with in the agreement).

Note 1: This subclause is a civil remedy provision: see subclause (4).

Note 2: Action that contravenes this subclause is not protected action (see clause 25).

(276) Schedule 1, item 360, page 611 (line 13), omit paragraph 23(7)(c), substitute:

(c) any person affected by the industrial action; or

(d) any other person prescribed by the regulations.
(277) Schedule 1, item 360, page 611 (line 24), omit paragraph 23(8)(d), substitute:
(d) any person affected by the industrial action; or
(e) any other person prescribed by the regulations.

(278) Schedule 1, item 360, page 613 (line 16), after “Engaging in”, insert “or organising”.

(279) Schedule 1, item 360, page 613 (after line 17), after Division 6, insert:

Division 6A—Protected conditions

25A Protected conditions where employment was subject to preserved State agreement

(1) This clause applies if:
(a) a person’s employment was subject to a preserved State agreement; and
(b) the agreement ceased to operate because a workplace agreement came into operation in relation to the employee.

(2) Protected preserved conditions:
(a) are taken to be included in the workplace agreement; and
(b) have effect in relation to the employment of that person; and
(c) have that effect subject to any terms of the workplace agreement that expressly exclude or modify all or part of them.

(3) Despite paragraph (2)(c), those protected preserved conditions have effect in relation to the employment of that person to the extent that those protected preserved conditions are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

(4) In this clause:
outworker means an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer.

outworker conditions means conditions (other than pay) for outworkers, but only to the extent necessary to ensure that their overall conditions of employment are fair and reasonable in comparison with the conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer’s business or commercial premises.

protected allowable award matters means the following matters:
(a) rest breaks;
(b) incentive-based payments and bonuses;
(c) annual leave loadings;
(d) observance of days declared by or under a law of a State or Territory to be observed generally within that State or Territory, or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements of employees to payment in respect of those days;
(e) days to be substituted for, or a procedure for substituting, days referred to in paragraph (d);
(f) monetary allowances for:
(i) expenses incurred in the course of employment; or
(ii) responsibilities or skills that are not taken into account in rates of pay for employees; or
(iii) disabilities associated with the performance of particular tasks or work in particular conditions or locations;
(g) loadings for working overtime or for shift work;
(h) penalty rates;
(i) outworker conditions;
(j) any other matter specified in the regulations.

Note: These matters are the same as certain allowable award matters mentioned in section 116.

protected preserved condition, in relation to the employment of a person, means a term of a State award or a provision of a State or Territory industrial law, as in force immediately before the reform commencement, that would have determined a term or condition of that employment, had the person been employed at that time and that employment not been subject to a State employment agreement, to the extent that the term or provision:

(a) is:
   (i) about protected allowable award matters; or
   (ii) incidental to a protected allowable award matter and may be included in an award as permitted by section 116I; or
   (iii) a machinery provision that is in respect of a protected allowable award matter and may be included in an award as permitted by section 116I; and
(b) is not about:
   (i) matters that are not allowable award matters because of section 116B; or
   (ii) any other matters specified in the regulations.

Division 1—What is a notional agreement preserving State awards?

Subdivision A—What is a notional agreement preserving State awards?

31 Notional agreements preserving State awards

If, immediately before the reform commencement, the terms and conditions of employment of one or more employees in a single business or a part of a single business:

(a) were not determined under a State employment agreement; and
(b) were determined, in whole or in part, under a State award (the original State award) or a State or Territory industrial law (the original State law);

a notional agreement preserving State awards is taken to come into operation on the reform commencement in respect of the business or that part of the business.

Subdivision B—Who is bound by or subject to a notional agreement preserving State awards?

32 Who is bound by a notional agreement preserving State awards?

Current employees

(1) Any person who:

(a) immediately before the reform commencement, was bound by, or a party to, the original State award or original State law; and
(b) is one of the following:
   (i) an employer in the business, or that part of the business;
   (ii) an employee who is employed in the business, or that part of the business, who was so employed immediately before the reform commencement, who was not bound by, or a party to, a State employment agree-
ment at that time and whose employment was not subject to such an agreement at that time;

(iii) an organisation that has at least one member who is such an employee, and that is entitled to represent the industrial interests of at least one such employee;

is bound by the notional agreement.

Future employees

(2) If:

(a) a person is employed in the business or that part of the business after the reform commencement; and

(b) under the terms of the original State award or the original State law, as in force immediately before the reform commencement, the person would have been bound by that award or that law; and

(c) that employment is not subject to a preserved State agreement;

that employment is subject to the notional agreement.

Subdivision C—Terms of a notional agreement preserving State awards

34 Terms of a notional agreement preserving State awards

(1) If, immediately before the reform commencement, a term of the original State award would have determined, in whole or in part, a term or condition of employment in the business or that part of the business of a person who was not bound by or a party to a State employment agreement, or whose employment was not subject to such an agreement, then to that extent, that term, as in force at that time, is taken to be a term of the notional agreement.

(2) If, immediately before the reform commencement, a provision of a State or Territory industrial law would have determined, in whole or in part, a preserved entitlement of a person employed in the business or that part of the business who was not bound by or a party to a State employment agreement, or whose employment was not subject to such an agreement, then to that extent, that provision, as in force at that time, is taken to be a term of the notional agreement.

33 Whose employment is subject to a notional agreement preserving State awards?

Current employees

(1) The employment of a person in the business or that part of the business is subject to the notional agreement, if:

(a) that employment was, immediately before the reform commencement, subject to the original State award or the original State law; and

(b) that employment was not subject to a State employment agreement at that time.

Future employees

(2) If:

(a) a person is employed in the business, or that part of the business, after the reform commencement; and

(b) under the terms of the original State award or the original State law, that employment would have been subject to that award or that law; and

(c) that employment is not subject to a preserved State agreement;

that employment is subject to the notional agreement.

Preserved entitlement means:

(a) an entitlement to:

(i) annual leave and annual leave loadings; or
(ii) parental leave, including maternity leave and adoption leave; or
(iii) personal/carer’s leave; or
(iv) leave relating to bereavement; or
(v) ceremonial leave; or
(vi) notice of termination; or
(vii) redundancy pay; or
(viii) loadings for working overtime or shift work; or
(ix) penalty rates, including the rate of payment for work on a public holiday; or
(x) rest breaks; or
(b) another prescribed entitlement.

35 Powers of State industrial authorities

(1) If a notional agreement preserving State awards confers a function or power on a State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.

(2) However, the employer and the persons bound by the notional agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

36 Dispute resolution processes

(1) A notional agreement preserving State awards is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.

(2) Any term of the notional agreement that would otherwise deal with the resolution of those disputes is void to that extent.

37 Prohibited content

A term of a notional agreement preserving State awards is void to the extent that it contains prohibited content of a prescribed kind.

Division 2—Effect and operation of a notional agreement preserving State awards

38 Effect of a notional agreement preserving State awards

(1) Except as provided in or under this Part, or otherwise in or under this Act, a notional agreement preserving State awards has effect according to its terms.

(2) This Part has effect despite the terms of the original State award, the original State law or any other law of a State or Territory.

(3) None of the terms and conditions of employment included in the notional agreement are enforceable under the law of a State or Territory.

38A Operation of a notional agreement preserving State awards

(1) A notional agreement preserving State awards ceases to be in operation at the end of a period of 3 years beginning on the reform commencement.

(2) A notional agreement preserving State awards ceases to be in operation in relation to an employee if a workplace agreement comes into operation in relation to the employee.

Note: The reference in subsection (2) to a workplace agreement includes a reference to a workplace determination (see section 113F).

(3) A notional agreement preserving State awards ceases to be in operation in relation to an employee if the employee becomes bound by an award.

(4) If the notional agreement has ceased operating in relation to an employee because of subclause (2) or (3), the agreement can never operate again in relation to that employee.
(281) Schedule 1, item 360, page 624 (line 9), after “term”, insert “; or more than one term.”.

(282) Schedule 1, item 360, page 624 (after line 25), after subclause 45(3), insert:

(3A) If more than one term of a notional agreement preserving State awards is about a matter referred to in subclause (2), then those terms, taken together, constitute the preserved notional term of that notional agreement about that matter.

(283) Schedule 1, item 360, page 624 (lines 30 and 31), omit paragraph 45(5)(a), substitute:

(a) the matter referred to in paragraph (1)(c) does not include one or both of the following:
   (i) special maternity leave (within the meaning of section 94C);
   (ii) the entitlement under section 94F to transfer to a safe job or to take paid leave; and

(284) Schedule 1, item 360, page 625 (lines 5 to 7), omit the note, substitute:

Note: The effect of excluding a form of leave or an entitlement in relation to a matter is that the entitlement in relation to that form of leave or matter under the Australian Fair Pay and Conditions Standard will automatically apply.

(285) Schedule 1, item 360, page 629 (after line 14), after subclause 52(2), insert:

(2A) Despite paragraph (2)(c), those protected notional conditions have effect in relation to the employment of that person to the extent that those protected notional conditions are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

(286) Schedule 1, item 360, page 629 (after line 35), after paragraph (d) of the definition of protected allowable award matters in subclause 52(3), insert:

(da) days to be substituted for, or a procedure for substituting, days referred to in paragraph (d);

(287) Schedule 1, item 360, page 630 (line 15), omit paragraph (a) of the definition of protected notional conditions in subclause 52(3), substitute:

(a) are:
   (i) about protected allowable award matters; or
   (ii) incidental to protected allowable award matters and may be included in an award as permitted by section 116I; or
   (iii) machinery provisions that are in respect of protected allowable award matters and may be included in an award as permitted by section 116I; and

(288) Schedule 1, item 360, page 630 (line 17), omit subparagraph (b)(i) of the definition of protected notional conditions in subclause 52(3), substitute:

(i) matters that are not allowable award matters because of section 116B; or

(289) Schedule 1, item 360, page 630 (after line 18), after Division 6, insert:

Division 6A—Industrial action during the life of an enterprise award

52AA Action taken during life of enterprise award not protected

(1) Engaging in or organising industrial action is not protected action if:

(a) either:
   (i) the person engaging in the industrial action is bound by a notional agreement preserving State awards that includes terms and conditions from an enterprise award; or
   (ii) the employment of the person engaging in the indus-
(2) In this clause:

enterprise award means a State award:

(a) that regulates a term or condition of employment of a person or persons by an employer in a single business or a part of a single business specified in the award; and

(b) that is specified to have effect for a period, either by reference to an actual or nominal expiry date or by reference to an actual or nominal period; and

(c) a term of which provides that one or more of the parties will not make further claims before the nominal expiry date for the award.

nominal expiry date for an enterprise award, means the last day of the actual or nominal period during which the enterprise award is specified to have effect.

(290) Schedule 1, item 360, page 632 (line 10), omit “Division 2”.

(291) Schedule 1, item 360, page 632 (line 31), omit “(within the meaning of Schedule 14)”.

Division 3 pre-reform certified agreement means a pre-reform certified agreement that was made under Division 3 of Part VIB of this Act before the reform commencement.

(293) Schedule 1, item 360, page 632 (after line 10), after the definition of pre-reform AWA in clause 3, insert:

pre-reform certified agreement has the same meaning as in Schedule 14.

(294) Schedule 1, item 360, page 632, after the proposed definition of pre-reform certified agreement, insert:

preserved collective State agreement has the same meaning as in Schedule 15.

preserved individual State agreement has the same meaning as in Schedule 15.

(295) Schedule 1, item 360, page 633 (line 21), omit “Division 2”.

(296) Schedule 1, item 360, page 633 (after line 25), after the definition of transitional industrial instrument in clause 3, insert:

transitional instrument means:

(a) a pre-reform AWA; or

(b) a pre-reform certified agreement; or

(c) a notional agreement preserving State awards; or

(d) a preserved State agreement.

(297) Schedule 1, item 360, page 634 (after line 24), at the end of subclause 5(1), add:

Note: Clause 6A of this Schedule provides that references to employees and employment have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 4AB(1)).

(298) Schedule 1, item 360, page 635 (after line 3), at the end of subclause 5(2), add:

Note: Clause 6A of this Schedule provides that references to employees and employment have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is
not an employer (within the meaning of subsection 4AB(1)).

(299) Schedule 1, item 360, page 635 (after line 18), at the end of subclause 6(1), add:
Note: Clause 6A of this Schedule provides that references to employees and employment have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 4AB(1)).

(300) Schedule 1, item 360, page 635 (after line 26), at the end of subclause 6(2), add:
Note: Clause 6A of this Schedule provides that references to employees and employment have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 4AB(1)).

(301) Schedule 1, item 360, page 635 (after line 28), at the end of Part 2, add:
6A Application of Schedule to certain Division 3 pre-reform certified agreements

(1) This clause applies if the old employer in relation to a Division 3 pre-reform certified agreement is not an employer (within the meaning of subsection 4AB(1)).

(2) In applying this Schedule to the Division 3 pre-reform certified agreement, references in this Schedule to:
(a) an employee; or
(b) employment;
have their ordinary meanings.

(302) Schedule 1, item 360, page 637 (line 13) to page 643 (line 34), omit Part 4, substitute:

PART 4—TRANSMISSION OF PRE-REFORM CERTIFIED AGREEMENTS

Division 1—General

10 Transmission of pre-reform certified agreement

New employer bound by Division 2 pre-reform certified agreement

(1) If:
(a) immediately before the time of transmission:
(i) the old employer; and
(ii) employees of the old employer;
were bound by a Division 2 pre-reform certified agreement; and
(b) there is at least one transferring employee in relation to the Division 2 pre-reform certified agreement;
the new employer is bound by the Division 2 pre-reform certified agreement by force of this subclause.

Note 1: The new employer must notify transferring employees and lodge a copy of the notices with the Employment Advocate (see clauses 28 and 29).

Note 2: See also clause 11 for the interaction between the Division 2 pre-reform certified agreement and other industrial instruments.

New employer bound by Division 3 pre-reform certified agreement

(2) If:
(a) the old employer is an employer (within the meaning of subsection 4AB(1)); and
(b) immediately before the time of transmission:
(i) the old employer; and
(ii) employees of the old employer;
were bound by a Division 3 pre-reform certified agreement; and

(c) there is at least one transferring employee in relation to the Division 3 pre-reform certified agreement;

the new employer is bound by the Division 3 pre-reform certified agreement by force of this subclause.

Note 1: The new employer must notify transferring employees and lodge a copy of the notices with the Employment Advocate (see clauses 28 and 29).

Note 2: See also clause 11 for the interaction between the Division 3 pre-reform certified agreement and other industrial instruments.

(3) If:

(a) the old employer is not an employer (within the meaning of subsection 4AB(1)); and

(b) immediately before the time of transmission:

(i) the old employer; and

(ii) employees of the old employer;

were bound by a Division 3 pre-reform certified agreement; and

(c) there is at least one transferring employee in relation to the Division 3 pre-reform certified agreement; and

(d) one or more of the following are satisfied:

(i) the new employer is an employer (within the meaning of subsection 4AB(1)) at the time of transmission;

(ii) the new employer is bound by another Division 3 pre-reform certified agreement at the time of transmission;

the new employer is bound by the Division 3 pre-reform certified agreement referred to in paragraph (b) by force of this subclause.

Note 1: Clause 6A of this Schedule provides that references to employees and employment have their ordinary meanings in relation to the Division 3 pre-reform certified agreement. This is because the old employer is not an employer (within the meaning of subsection 4AB(1)).

Note 2: The new employer must notify transferring employees and lodge a copy of the notices with the Employment Advocate (see clauses 28 and 29).

Note 3: See also clause 11 for the interaction between the Division 3 pre-reform certified agreement and other industrial instruments.

Period for which new employer remains bound

(4) The new employer remains bound by the pre-reform certified agreement, by force of subclause (1), (2) or (3), until whichever of the following first occurs:

(a) the pre-reform certified agreement ceases to be in operation because it is terminated under section 170MG of the pre-reform Act (as applied by subclause 2(1) of Schedule 14);

(b) there cease to be any transferring employees in relation to the pre-reform certified agreement;

(c) the new employer ceases to be bound by the pre-reform certified agreement in relation to all the transferring employees in relation to the agreement;

(d) the transmission period ends;

(e) if:
(i) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and

(ii) the new employer is an excluded employer (within the meaning of Schedule 13) when the period of 5 years beginning on the reform commencement ends;

the period referred to in subparagraph (ii) ends.

Note: Paragraph (c)—see subclause (6).

(5) Paragraph (4)(d) does not apply if:

(a) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and

(b) the old employer is not an employer within the meaning of subsection 4AB(1) immediately before the time of transmission; and

(c) the new employer is an employer within the meaning of subsection 4AB(1) at the time of transmission; and

(d) the transmission occurs as part of the process of the employer in relation to the business being transferred becoming an employer within the meaning of subsection 4AB(1).

Period for which new employer remains bound in relation to particular transferring employee

(6) The new employer remains bound by the pre-reform certified agreement in relation to a particular transferring employee, by force of subclause (1), (2) or (3), until whichever of the following first occurs:

(a) the pre-reform certified agreement ceases to be in operation in relation to the transferring employee’s employment with the new employer because the new employer makes an AWA with the transferring employee (see subclause 12(2));

(b) the pre-reform certified agreement ceases to be in operation in relation to the transferring employee’s employment with the new employer because a collective agreement comes into operation in relation to the transferring employee in relation to that employment (see subclause 3(1) of Schedule 14);

(c) the employer ceases to be bound by the pre-reform certified agreement under subclause (4).

New employer bound only in relation to employment of transferring employees in business being transferred

(7) The new employer is bound by the pre-reform certified agreement, by force of subclause (1), (2) or (3), only in relation to the employment, in the business being transferred, of employees who are transferring employees in relation to the pre-reform certified agreement.

New employer bound subject to Commission order

(8) Subclauses (1), (2), (3), (4) and (6) have effect subject to any order of the Commission under clause 14.

Old employer’s rights and obligations that arose before time of transmission not affected

(9) This clause does not affect the rights and obligations of the old employer that arose before the time of transmission.

11 Interaction rules

Transmitted certified agreement

(1) This clause applies if subclause 10(1), (2) or (3) applies to a pre-reform certified agreement (the transmitted certified agreement).
Existing collective agreements

(2) If:

(a) the new employer is bound by a collective agreement (the existing collective agreement); and

(b) the existing collective agreement would, but for this subclause, apply, according to its terms, to a transferring employee in relation to the transmitted certified agreement when the transferring employee becomes employed by the new employer;

the existing collective agreement does not apply to the transferring employee.

(3) Subclause (2) ceases to apply when whichever of the following first occurs:

(a) the transmission period ends;

(b) if:

(i) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and

(ii) the new employer is an excluded employer (within the meaning of Schedule 13) when the period of 5 years beginning on the reform commencement ends;

the period referred to in subparagraph (ii) ends.

(4) Subclause (3) does not apply if:

(a) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and

(b) the old employer is not an employer within the meaning of subsection 4AB(1) immediately before the time of transmission; and

(c) the new employer is an employer within the meaning of subsection 4AB(1) at the time of transmission; and

(d) the transmission occurs as part of the process of the employer in relation to the business being transferred becoming an employer within the meaning of subsection 4AB(1).

Transitional industrial instruments not to apply

(5) From the time of transmission, a transitional industrial instrument (other than the transmitted certified agreement) does not apply to the transferring employee’s employment with the new employer.

(6) Subclause (5) has effect despite section 170LY of the pre-reform Act (as applied by subclause 2(1) of Schedule 14).

12 Termination of transmitted pre-reform certified agreement

Transmitted agreement

(1) This clause applies if subclause 10(1), (2) or (3) applies to a pre-reform certified agreement (the transmitted certified agreement).

AWA

(2) Despite subclause 3(2) of Schedule 14, the transmitted certified agreement ceases to be in operation in relation to a transferring employee’s employment with the new employer if an AWA between the new employer and the transferring employee comes into operation in relation to that employment after the time of transmission.

Note: Subclause 3(2) of Schedule 14 provides that a pre-reform certified agreement is normally only suspended while an AWA operates. The effect of subclause (2) of this clause is to terminate the operation of the transmitted certified agreement in relation to the transferring employee’s employment when the AWA is made.

Modified operation of sections 170MH and 170MHA of the pre-reform Act

(3) The transmitted certified agreement cannot be terminated under section
Division 2—Commission’s powers

13 Application and terminology

(1) This Division applies if:

(a) a person is bound by a pre-reform certified agreement; and

(b) another person:

(i) becomes at a later time; or

(ii) is likely to become at a later time;

the successor, transmittee or assignee of the whole, or a part, of the business of the person referred to in paragraph (a).

(2) For the purposes of this Division:

(a) the outgoing employer is the person referred to in paragraph (1)(a); and

(b) the incoming employer is the person first referred to in paragraph (1)(b); and

(c) the business concerned is the business, or the part of the business, to which the incoming employer becomes, or is likely to become, the successor, transmittee or assignee; and

(d) the transfer time is the time at which the incoming employer becomes, or is likely to become, the successor, transmittee or assignee of the business concerned.

14 Commission may make order

(1) The Commission may make an order that the incoming employer:

(a) is not, or will not be, bound by the pre-reform certified agreement; or

(b) is, or will be, bound by the pre-reform certified agreement, but only to the extent specified in the order.

The order must specify the day from which the order takes effect. That day must not be before the day on which the order is made or before the transfer time.

(2) Without limiting paragraph (1)(b), the Commission may make an order under that paragraph that the incoming employer is, or will be, bound by the pre-reform certified agreement but only for the period specified in the order.

(3) To avoid doubt, the Commission cannot make an order under subclause (1) that would have the effect of extending the transmission period.

15 When application for order can be made

An application for an order under subclause 14(1) may be made before, at or after the transfer time.

16 Who may apply for order

(1) Before the transfer time, an application for an order under subclause 14(1) may be made only by the outgoing employer.

(2) At or after the transfer time, an application for an order under subclause 14(1) may be made only by:

(a) the incoming employer; or

(b) a transferring employee in relation to the pre-reform certified agreement; or

(c) an organisation of employees that is bound by the pre-reform certified agreement; or

(d) an organisation of employees that:

(i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the pre-reform certified agreement; and

(ii) has been requested by the transferring employee to apply for the order on the transferring employee’s behalf.
17 Applicant to give notice of application
The applicant for an order under subclause 14(1) must take reasonable steps to give written notice of the application to the persons who may make submissions in relation to the application (see clause 18).

18 Submissions in relation to application
(1) Before deciding whether to make an order under subclause 14(1) in relation to the pre-reform certified agreement, the Commission must give the following an opportunity to make submissions:
(a) the applicant;
(b) before the transfer time—the persons covered by subclause (2);
(c) at and after the transfer time—the persons covered by subclause (3).
(2) For the purposes of paragraph (1)(b), this subclause covers:
(a) an employee of the outgoing employer:
   (i) who is bound by the pre-reform certified agreement; and
   (ii) who is employed in the business concerned; and
(b) the incoming employer; and
(c) an organisation of employees that is bound by the pre-reform certified agreement; and
(d) an organisation of employees that:
   (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the pre-reform certified agreement; and
   (ii) has been requested by the transferring employee to make submissions on the transferring employee’s behalf in relation to the application for the order under subclause 14(1).
(3) For the purposes of paragraph (1)(c), this subclause covers:
(a) the incoming employer; and
(b) a transferring employee in relation to the pre-reform certified agreement; and
(c) an organisation of employees that is bound by the pre-reform certified agreement; and
(d) an organisation of employees that:
   (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the pre-reform certified agreement; and
   (ii) has been requested by the transferring employee to make submissions on the transferring employee’s behalf in relation to the application for the order under subclause 14(1).

(303) Schedule 1, item 360, page 644 (line 29), omit “clauses 5 and 21”, substitute “clauses 15G and 21”.

(304) Schedule 1, item 360, page 644 (line 33), omit “subclause 33(1)”, substitute “subclause 38A(1)”.

(305) Schedule 1, item 360, page 645 (line 17), omit “subclause 5(2)”; substitute “subclause 15G(2)”.

(306) Schedule 1, item 360, page 645 (line 24), omit “subclause 33(2)”; substitute “subclause 38A(2)”.

(307) Schedule 1, item 360, page 645 (line 29), omit “subclause 33(3)”; substitute “subclause 38A(3)”.

(308) Schedule 1, item 360, page 651 (lines 10 and 11), omit subparagraph 28(1)(a)(ii), substitute:
   (ii) subclause 10(1), (2) or (3) (pre-reform certified agreement); or

(309) Schedule 1, item 360, page 651 (line 34) to page 652 (line 2), omit paragraph 28(3)(f), substitute:
   (f) identify:
      (i) any provisions of the Australian Fair Pay and Conditions Standard; or
(ii) any other instrument;
that the employer intends to be the
source for terms and conditions that
will apply to the matters that are
dealt with by the transmitted instru-
ment when the transmitted instru-
ment ceases to bind the employer;
and
(310) Schedule 1, item 360, page 652 (after line 8), after subclause 28(3), insert:
(3A) Subject to subclause (3B), if the
notice under subclause (3) identi-
ifies an instrument under paragraph
(3)(g), the employer must give the
transferring employee a copy of the
instrument together with the notice.
Note: This is a civil remedy provision,
see clause 31.
(3B) Subclause (3A) does not apply if:
(a) the transferring employee is
able to easily access a copy of
the instrument in a particular
way; and
(b) the notice under subclause (3)
tells the transferring employee
that a copy of the instrument is
accessible in that way.
Note: Paragraph (a)—the copy may be
available, for example, on the
Internet.
(311) Schedule 1, item 360, page 652 (line 23), omit “Division 2”.
(312) Schedule 1, item 360, page 653 (line 3), omit “Division 2”.
(313) Schedule 1, item 360, page 653 (line 17), omit “Division 2”.
(314) Schedule 1, item 360, page 654 (line 8), omit paragraph 31(1)(a), substitute:
(a) subclauses 28(2) and (3A);
(315) Schedule 1, item 360, page 655 (table item 2, 2nd column), omit “Division 2”.
(316) Schedule 1, item 360, page 656 (after line 11), after the definition of this Schedule
in clause 32 of Schedule 16, insert:
Victorian reference Division 3 pre-reform
certified agreement has the same meaning
as in Part 9 of Schedule 14.
(317) Schedule 1, item 360, page 657 (after line 23), after clause 33, insert:
33A Victorian reference Division 3 pre-
reform certified agreements
(1) Clause 6A, subclauses 10(2), (3) and
(5), paragraph 11(3)(b) and subclause
11(4) do not apply to a Victorian ref-
ence Division 3 pre-reform certi-
fied agreement.
(2) Division 1 of Part 4 of this Schedule
applies to a Victorian reference Divi-
sion 3 pre-reform certified agreement
as if the agreement had been made
under section 170LJ of the pre-
reform Act in that section’s operation
in accordance with repealed Division
2 of Part XV.
(318) Schedule 1, item 360, page 658 (line 13), omit “clause 7”, substitute “clause 15D”.
(319) Page 658 (after line 25), after Schedule 1, insert:
Schedule 1A—Establishment of Aus-
tralian Fair Pay Commission
Workplace Relations Act 1996
1 After Part I
Insert:
PART 1A—AUSTRALIAN FAIR PAY COMMISSION
Division 1—Preliminary
7F Definitions
In this Part:
AFPC means the Australian Fair Pay
Commission established by section 7G.
AFPC Chair means the AFPC Chair
appointed under section 7P.
AFPC Commissioner means an AFPC
Commissioner appointed under section
7Y.
AFPC Secretariat means the AFPC Se-
cretariat established under section 7ZG.
Director of the Secretariat means the Director of the Secretariat appointed under section 7ZK.

wage review means a review conducted by the AFPC to determine whether it should exercise any of its wage-setting powers.

wage-setting decision means a decision made by the AFPC in the exercise of its wage-setting powers.

wage-setting function has the meaning given by subsection 7I(1).

wage-setting powers means the powers of the AFPC under Division 2 of Part VA.

Division 2—Australian Fair Pay Commission

Subdivision A—Establishment and functions

7G Establishment
(1) The Australian Fair Pay Commission is established by this section.

(2) The AFPC is to consist of:
   (a) the AFPC Chair; and
   (b) 4 AFPC Commissioners.

7H Functions of the AFPC

The functions of the AFPC are as follows:

(a) its wage-setting function as set out in subsection 7I(1);

(b) any other functions conferred on the AFPC under this Act or any other Act;

(c) any other functions conferred on the AFPC by regulations made under this Act or any other Act;

(d) to undertake activities to promote public understanding of matters relevant to its wage-setting and other functions.

Subdivision B—AFPC’s wage-setting function

7I AFPC’s wage-setting function

The AFPC’s wage-setting function

(1) The AFPC’s wage-setting function is to:

(a) conduct wage reviews; and

(b) exercise its wage-setting powers as necessary depending on the outcomes of wage reviews.

Note: The main wage-setting powers of the AFPC cover the following matters (within the meaning of Division 2 of Part VA):

(a) adjusting the standard FMW (short for Federal Minimum Wage);

(b) determining or adjusting special FMWs for junior employees, employees with disabilities or employees to whom training arrangements apply;

(c) determining or adjusting basic periodic rates of pay and basic piece rates of pay payable to employees or employees of particular classifications;

(d) determining or adjusting casual loadings.

(2) During the period (the interim period) from the commencement of this Part to the commencement of Division 2 of Part VA, the AFPC has the function of gathering information (including by undertaking or commissioning research, or consulting with any person or body) for the purpose of assisting it to perform its wage-setting function after that Division has commenced. When performing its wage-setting function, the AFPC may have regard to any information so gathered during the interim period.

7J AFPC’s wage-setting parameters

The objective of the AFPC in performing its wage-setting function is to promote the
economic prosperity of the people of Australia having regard to the following:

(a) the capacity for the unemployed and low paid to obtain and remain in employment;
(b) employment and competitiveness across the economy;
(c) providing a safety net for the low paid;
(d) providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

7K Wage reviews and wage-setting decisions

(1) The AFPC may determine the following:

(a) the timing and frequency of wage reviews;
(b) the scope of particular wage reviews;
(c) the manner in which wage reviews are to be conducted;
(d) when wage-setting decisions are to come into effect.

(2) For the purposes of performing its wage-setting function, the AFPC may inform itself in any way it thinks appropriate, including by:

(a) undertaking or commissioning research; or
(b) consulting with any other person, body or organisation; or
(c) monitoring and evaluating the impact of its wage-setting decisions.

(3) Subsections (1) and (2) have effect subject to this Act and any regulations made under this Act.

(4) The AFPC’s wage-setting decisions must:

(a) be in writing; and
(b) be expressed as decisions of the AFPC as a body; and
(c) include reasons for the decisions, expressed as reasons of the AFPC as a body.

A wage-setting decision is not a legislative instrument.

7L Constitution of the AFPC for wage-setting powers

(1) For the purposes of exercising its wage-setting powers, the AFPC must be constituted by:

(a) the AFPC Chair; and
(b) the 4 AFPC Commissioners.

(2) However, if the AFPC Chair considers it necessary in circumstances where AFPC Commissioners are unavailable, the AFPC Chair may determine that, for the purposes of exercising its wage-setting powers in those circumstances, the AFPC is to be constituted by:

(a) the AFPC Chair; and
(b) no fewer than 2 AFPC Commissioners.

7M Publishing wage-setting decisions etc.

(1) The AFPC must publish its wage-setting decisions.

(2) The AFPC may, as it thinks appropriate, publish other information about wages or its wage-setting function.

(3) Publishing under subsection (1) or (2) may be done in any way the AFPC thinks appropriate.

Subdivision C—Operation of the AFPC

7N AFPC to determine its own procedures

(1) The AFPC may determine the procedures it will use in performing its functions.

(2) Subsection (1) has effect subject to Subdivision B and any regulations made under subsection (3).

(3) The regulations may prescribe procedures to be used by the AFPC for all or for specified purposes.
7O Annual report
The AFPC must, as soon as practicable after the end of each financial year, give to the Minister a report on the operation of the AFPC for presentation to the Parliament.

Subdivision D—AFPC Chair

7P Appointment
(1) The AFPC Chair is to be appointed by the Governor-General by written instrument.

(2) The AFPC Chair may be appointed on a full-time or part-time basis and holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

(3) To be appointed as AFPC Chair, a person must have a high level of skills and experience in business or economics.

7Q Remuneration
(1) The AFPC Chair is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the AFPC Chair is to be paid the remuneration that is prescribed.

(2) The AFPC Chair is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

7R Leave of absence
(1) If the AFPC Chair is appointed on a full-time basis:

(a) the AFPC Chair has the recreation leave entitlements that are determined by the Remuneration Tribunal; and

(b) the Minister may grant the AFPC Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(2) If the AFPC Chair is appointed on a part-time basis, the Minister may grant leave of absence to the AFPC Chair on the terms and conditions that the Minister determines.

7S Engaging in other paid employment
If the AFPC Chair is appointed on a full-time basis, the AFPC Chair must not engage in paid employment outside the duties of his or her office without the Minister’s approval.

7T Disclosure of interests
The AFPC Chair must give written notice to the Minister of all interests (financial or otherwise) that the AFPC Chair has or acquires and that could conflict with the proper performance of his or her duties.

7U Resignation
(1) The AFPC Chair may resign his or her appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

7V Termination of appointment
(1) The Governor-General may terminate the appointment of the AFPC Chair if:

(a) the AFPC Chair:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the AFPC Chair fails, without reasonable excuse, to comply with section 7T; or

(c) the AFPC Chair has or acquires interests (including by being an employer or employee) that the Minister considers conflict unacceptably with the proper performance of the AFPC Chair’s duties; or

(d) the AFPC Chair fails to comply with such directions as the Minister gives the AFPC Chair in writing.
(d) if the AFPC Chair is appointed on a full-time basis:
   (i) the AFPC Chair engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or
   (ii) the AFPC Chair is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
(e) if the AFPC Chair is appointed on a part-time basis—the AFPC Chair is absent, except on leave of absence, to an extent that the Minister considers excessive.

(2) Subject to subsections (3), (4) and (5), the Governor-General may terminate the appointment of the AFPC Chair for misbehaviour or physical or mental incapacity.

(3) If the AFPC Chair:
   (a) is an eligible employee for the purposes of the Superannuation Act 1976; and
   (b) has not reached his or her maximum retiring age within the meaning of that Act;
his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.

(4) If the AFPC Chair:
   (a) is a member of the superannuation scheme established by deed under the Superannuation Act 1990; and
   (b) is under 60 years of age;
his or her appointment cannot be terminated for physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.

(5) If the AFPC Chair:
   (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the Superannuation Act 2005; and
   (b) is under 60 years of age;
his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

7W Other terms and conditions
The AFPC Chair holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

7X Acting AFPC Chair
(1) The Minister may appoint a person who meets the requirements set out in subsection 7P(3) to act as the AFPC Chair:
   (a) during a vacancy in the office of the AFPC Chair (whether or not an appointment has previously been made to the office); or
   (b) during any period, or during all periods, when the AFPC Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

Subdivision E—AFPC Commissioners

7Y Appointment
(1) An AFPC Commissioner is to be appointed by the Governor-General by written instrument.
(2) An AFPC Commissioner holds office on a part-time basis for the period specified in his or her instrument of appointment. The period must not exceed 4 years.

(3) To be appointed as an AFPC Commissioner, a person must have experience in one or more of the following areas:
   (a) business;
   (b) economics;
   (c) community organisations;
   (d) workplace relations.

7Z Remuneration

(1) An AFPC Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, an AFPC Commissioner is to be paid the remuneration that is prescribed.

(2) An AFPC Commissioner is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

7ZA Leave of absence

The AFPC Chair may grant leave of absence to an AFPC Commissioner on the terms and conditions that the AFPC Chair determines.

7ZB Disclosure of interests

An AFPC Commissioner must give written notice to the Minister of all interests (financial or otherwise) that the AFPC Commissioner has or acquires and that could conflict with the proper performance of his or her duties.

7ZC Resignation

(1) An AFPC Commissioner may resign his or her appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

7ZD Termination of appointment

(1) The Governor-General may terminate the appointment of an AFPC Commissioner if:
   (a) the AFPC Commissioner:
      (i) becomes bankrupt; or
      (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
      (iii) compounds with his or her creditors; or
      (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
   (b) the AFPC Commissioner fails, without reasonable excuse, to comply with section 7ZB; or
   (c) the AFPC Commissioner has or acquires interests (including by being an employer or employee) that the Minister considers conflict unacceptably with the proper performance of the AFPC Commissioner’s duties; or
   (d) the AFPC Commissioner is absent, except on leave of absence, to an extent that the Minister considers excessive.

(2) Subject to subsections (3), (4) and (5), the Governor-General may terminate the appointment of an AFPC Commissioner for misbehaviour or physical or mental incapacity.

(3) If an AFPC Commissioner:
   (a) is an eligible employee for the purposes of the Superannuation Act 1976; and
   (b) has not reached his or her maximum retiring age within the meaning of that Act;
   his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.

(4) If an AFPC Commissioner:
(a) is a member of the superannuation scheme established by deed under the Superannuation Act 1990; and
(b) is under 60 years of age;
his or her appointment cannot be terminated for physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.

(5) If an AFPC Commissioner:
(a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the Superannuation Act 2005; and
(b) is under 60 years of age;
his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

7ZE Other terms and conditions
An AFPC Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

7ZF Acting AFPC Commissioners
(1) The Minister may appoint a person who meets the requirement set out in subsection 7Y(3) to act as an AFPC Commissioner:
(a) during a vacancy in the office of an AFPC Commissioner (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when an AFPC Commissioner is acting as AFPC Chair, is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:

(a) the occasion for the appointment had not arisen; or
(b) there was a defect or irregularity in connection with the appointment; or
(c) the appointment had ceased to have effect; or
(d) the occasion to act had not arisen or had ceased.

Division 3—AFPC Secretariat
Subdivision A—Establishment and function
7ZG Establishment
(1) The AFPC Secretariat is established by this section.

(2) The AFPC Secretariat is to consist of:
(a) the Director of the Secretariat; and
(b) the staff of the Secretariat.

7ZH Function
The function of the AFPC Secretariat is to assist the AFPC in the performance of the AFPC’s functions.

Subdivision B—Operation of the AFPC Secretariat
7ZI AFPC Chair may give directions
(1) The AFPC Chair may give directions to the Director of the Secretariat about the performance of the function of the AFPC Secretariat.

(2) The Director of the Secretariat must ensure that a direction given under subsection (1) is complied with.

(3) To avoid doubt, the AFPC Chair must not give directions under subsection (1) in relation to the performance of functions, or exercise of powers, under the Financial Management and Accountability Act 1997 or the Public Service Act 1999.

7ZJ Annual report
The Director of the Secretariat must, as soon as practicable after the end of each financial year, give to the Minister a report on the op-
eration of the AFPC Secretariat for presentation to the Parliament.

Subdivision C—The Director of the Secretariat

7ZK Appointment

(1) The Director of the Secretariat is to be appointed by the Minister by written instrument.

(2) The Director of the Secretariat holds office on a full-time basis for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

7ZL Remuneration

(1) The Director of the Secretariat is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director of the Secretariat is to be paid the remuneration that is prescribed.

(2) The Director of the Secretariat is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

7ZM Leave of absence

(1) The Director of the Secretariat has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Director of the Secretariat leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

7ZN Engaging in other paid employment

The Director of the Secretariat must not engage in paid employment outside the duties of his or her office without the Minister’s approval.

7ZO Disclosure of interests

The Director of the Secretariat must give written notice to the Minister of all interests (financial or otherwise) that the Director of the Secretariat has or acquires and that could conflict with the proper performance of his or her duties.

7ZP Resignation

(1) The Director of the Secretariat may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

7ZQ Termination of appointment

(1) The Minister may terminate the appointment of the Director of the Secretariat if:

(a) the Director of the Secretariat:
   (i) becomes bankrupt; or
   (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
   (iii) compounds with his or her creditors; or
   (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Director of the Secretariat fails, without reasonable excuse, to comply with section 7ZO; or

(c) the Director of the Secretariat has or acquires interests that the Minister considers conflict unacceptably with the proper performance of the Director of the Secretariat’s duties; or

(d) the Director of the Secretariat engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or

(e) the Director of the Secretariat is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

(2) The Minister must terminate the appointment of the Director of the Secre-
tariat if the Minister is of the opinion that the performance of the Director of the Secretariat has been unsatisfactory for a significant period of time.

(3) Subject to subsections (4), (5) and (6), the Minister may terminate the appointment of the Director of the Secretariat for misbehaviour or physical or mental incapacity.

(4) If the Director of the Secretariat:
   (a) is an eligible employee for the purposes of the Superannuation Act 1976; and
   (b) has not reached his or her maximum retiring age within the meaning of that Act;

his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.

(5) If the Director of the Secretariat:
   (a) is a member of the superannuation scheme established by deed under the Superannuation Act 1990; and
   (b) is under 60 years of age;

his or her appointment cannot be terminated for physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.

(6) If the Director of the Secretariat:
   (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the Superannuation Act 2005; and
   (b) is under 60 years of age;

his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

7ZR Other terms and conditions

The Director of the Secretariat holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

7ZS Acting Director of the Secretariat

(1) The Minister may appoint a person to act as the Director of the Secretariat:
   (a) during a vacancy in the office of the Director of the Secretariat (whether or not an appointment has previously been made to the office); or
   (b) during any period, or during all periods, when the Director of the Secretariat is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

Subdivision D—Staff and consultants

7ZT Staff

(1) The staff of the AFPC Secretariat are to be persons engaged under the Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:
   (a) the Director of the Secretariat and the staff of the AFPC Secretariat together constitute a Statutory Agency; and
   (b) the Director of the Secretariat is the Head of that Statutory Agency.

7ZU Consultants

The Director of the Secretariat may, on behalf of the Commonwealth, engage persons
having suitable qualifications and experience as consultants to the AFPC or the AFPC Secretariat. The terms and conditions of the engagement of a person are those determined by the Director of the Secretariat in writing.

Financial Management and Accountability Regulations 1997

2 Part 1 of Schedule 1 (after table item 110)

Insert:

110A Australian Fair Pay Commission Secretariat (the AFPC Secretariat), comprising:
(a) the Director of the AFPC Secretariat; and
(b) the staff of the AFPC Secretariat; and
(c) consultants engaged by the Director of the AFPC Secretariat under section 7ZU of the Workplace Relations Act 1996

See Note B

(320) Schedule 2, item 2, page 660 (line 5), after “clause 3”, insert “or 10”.

(321) Schedule 2, item 2, page 661 (lines 11 to 13), omit paragraph 2(1)(a).

(322) Schedule 2, item 2, page 661 (lines 16 and 17), omit “the State award, the State employment agreement”, substitute “a State award, a State employment agreement”.

(323) Page 673 (after line 27), after Schedule 3, insert:

Schedule 3A—Redundancy pay by small business employers

Workplace Relations Act 1996

1 Paragraph 89A(2)(m)

Repeal the paragraph, substitute:
(m) redundancy pay by an employer of 15 or more employees;

2 Subsection 89A(7)

Omit “Subsection (1)”, substitute “Subject to subsection (7A), subsection (1)”.

3 After subsection 89A(7)

Insert:

(7A) In spite of subsection (7), subsection (1) excludes from an industrial dispute the matter of redundancy pay by an employer of fewer than 15 employees.

4 After subsection 89A(8)

Insert:

Interpretation—redundancy pay provisions

(8A) For the purposes of paragraph (2)(m) and subsection (7A):
(a) whether an employer employs 15 or more employees, or fewer than 15 employees, is to be worked out as at the time (the relevant time):
(i) when notice of the redundancy is given by the employer or by the employee who becomes redundant; or
(ii) when the redundancy occurs;
whichever happens first; and
(b) a reference to employees includes a reference to:
(i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and
(ii) any casual employee who, at the relevant time, has been engaged by the employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).

5 After Part VI

Insert:

PART VIAA—STATE AND TERRITORY LAWS ETC. ABOUT REDUNDANCY PAYMENTS BY SMALL BUSINESSES

CHAMBER
167 Certain small businesses not bound by requirement to pay redundancy pay

(1) This section applies to a State law, a State award, a State authority order or a Territory law (each of which is an eligible instrument).

(2) If an eligible instrument would, apart from this section, have the effect of requiring a relevant employer that employs fewer than 15 employees to pay redundancy pay, the eligible instrument does not have that effect.

(3) For the purposes of subsection (2):
   (a) whether a relevant employer employs fewer than 15 employees is to be worked out as at the time (the relevant time):
      (i) when notice of the redundancy is given by the employer or by the employee who becomes redundant; or
      (ii) when the redundancy occurs; whichever happens first; and
   (b) a reference to employees includes a reference to:
      (i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and
      (ii) any casual employee who, at the relevant time, has been engaged by the relevant employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).

(4) In this section:
   relevant employer means:
   (a) in the case of a State law, a State award or a State authority order—a constitutional corporation; or
   (b) in the case of a Territory law—any employer.

State law means a law of a State (including any regulations or other instruments made under a law of a State), but does not include a State employment agreement.

Territory law means a law of a Territory (including any regulations or other instruments made under a law of a Territory).

6 At the end of section 170FA

Add:

(3) In so far as an order is made for the purposes of Article 12 of that Convention, the Commission must not make an order in relation to the matter of redundancy pay by an employer of fewer than 15 employees.

(4) For the purposes of subsection (3):
   (a) whether an employer employs fewer than 15 employees is to be worked out as at the time (the relevant time):
      (i) when notice of the redundancy is given by the employer or by the employee who becomes redundant; or
      (ii) when the redundancy occurs; whichever happens first; and
   (b) a reference to employees includes a reference to:
      (i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and
      (ii) any casual employee who, at the relevant time, has been engaged by the employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).

7 Application

(1) The amendments made by items 1 to 4 apply to:
(a) dealing with an industrial dispute by arbitration after the commencement of this Schedule; and
(b) preventing or settling an industrial dispute by making an award or order after the commencement of this Schedule; and
(c) maintaining the settlement of an industrial dispute by varying an award or order after the commencement of this Schedule; whether the industrial dispute arose before or arises after the commencement of this Schedule.

(2) The amendment made by item 5 applies to:
(a) an eligible instrument made after the commencement of this Schedule that has the effect mentioned in subsection 167(2) of the Workplace Relations Act 1996 as inserted by that item; and
(b) an eligible instrument, made before or after the commencement of this Schedule, that is amended or varied after the commencement of this Schedule with the result that it has that effect.

(3) The amendment made by item 6 applies to the making of orders after the commencement of this Schedule.

8 Transitional—awards and orders of the Commission

(1) If, during the period from the start of 26 March 2004 until the commencement of this Schedule, the Commission:
(a) made an award or order that had the effect of requiring an employer of fewer than 15 employees to pay redundancy pay; or
(b) varied an award or order, made before or during that period, with the result that it had that effect;
then, from the commencement of this Schedule, the award or order ceases to have that effect.

(2) For the purposes of paragraph (1)(a):
(a) whether an employer employs fewer than 15 employees is to be worked out as at the time (the relevant time):
(i) when notice of the redundancy is given by the employer or by the employee who becomes redundant; or
(ii) when the redundancy occurs; whichever happens first; and
(b) a reference to employees includes a reference to:
(i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and
(ii) any casual employee who, at the relevant time, has been engaged by the employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).

9 Transitional—eligible instruments

Item applies to eligible instruments with small business redundancy pay requirements just before commencement

(1) This item applies if, just before the commencement of this Schedule, an eligible instrument contained provisions requiring some or all relevant employers (the affected employers) that employ fewer than 15 employees to pay redundancy pay.

Eligible instruments that began to provide for small business redundancy pay between 26 March 2004 and commencement

(2) If:
(a) the eligible instrument was made before 26 March 2004 and just before 26 March 2004 the eligible instrument did not contain provisions requiring the affected employers to pay redundancy pay; or
(b) the eligible instrument was made on or after 26 March 2004;
then, from the commencement of this Schedule, the provisions do not have the effect of requiring any affected employers to pay redundancy pay.

*Eligible instruments where Federal award suppressed a small business redundancy pay requirement that was present just before 26 March 2004*

(3) If:

(a) just before 26 March 2004, the eligible instrument contained provisions requiring the affected employers to pay redundancy pay; and
(b) only because of a Federal award, the provisions did not, just before the commencement of this Schedule, have the effect of requiring a particular affected employer to pay redundancy pay;
then the provisions do not, at or at any time after the commencement of this Schedule, have that effect in relation to the particular affected employer.

*Eligible instruments where certified agreement or AWA suppressed a small business redundancy pay requirement that was present just before 26 March 2004, and a Federal award would also have had that effect*

(4) If:

(a) just before 26 March 2004, the eligible instrument contained provisions requiring the affected employers to pay redundancy pay; and
(b) just before the commencement of this Schedule:
(i) only because of a certified agreement or an AWA, the provisions did not have the effect of requiring a particular affected employer to pay redundancy pay; and
(ii) disregarding the certified agreement or the AWA, the provisions would still not have had that effect, and this would have been so only because of a Federal award;
then the provisions do not, at or at any time after the commencement of this Schedule, have that effect in relation to the particular affected employer.

*Eligible instruments where small business redundancy pay requirement was present just before 26 March 2004 and a future Federal award starts to apply*

(5) If:

(a) just before 26 March 2004, the eligible instrument contained provisions requiring the affected employers to pay redundancy pay; and
(b) neither subitem (3) nor subitem (4) applies; and
(c) the eligible instrument contains the provisions from the commencement of this Schedule until a later time (the award time) when a particular affected employer becomes bound by a Federal award; and
(d) the Federal award applies in relation to some or all of the particular affected employer’s employees (the affected employees) to whom the requirement to pay redundancy pay relates;
then, from the award time, the provisions do not have the effect of requiring the particular affected employer to pay redundancy pay in respect of the affected employees.

*Definitions*

(6) In this item:

eligible instrument has the meaning given by subsection 167(1) of the Workplace Relations Act 1996 as inserted by item 5 of this Schedule.

Federal award means an award under the Workplace Relations Act 1996.
relevant employer has the meaning given by subsection 167(4) of the Workplace Relations Act 1996 as inserted by item 5 of this Schedule.

10 Protection of existing entitlements

Nothing in this Schedule, or an amendment made by this Schedule, affects any entitlement to a payment that had arisen before the commencement of this Schedule.

(324) Schedule 4, item 4, page 675 (after line 16), after the definition of award in subitem 4(1), insert:

eligible entity has the same meaning as in Division 6A of Part VI of the amended Act.

(325) Schedule 4, item 4, page 675 (after line 20), after the definition of employer in subitem 4(1), insert:

outworker term has the same meaning as in Division 6A of Part VI of the amended Act.

(326) Schedule 4, item 4, page 675 (lines 22 and 23), omit “, to the extent that the original award regulates employers in respect of the employment of their employees”.

(327) Schedule 4, item 4, page 675 (lines 27 and 28), omit “in respect of matters relating to the employment of employees”.

(328) Schedule 4, item 4, page 676 (line 2), at the end of paragraph 4(3)(c), add “, to the extent that the original award regulates work performed by the employee”.

(329) Schedule 4, item 4, page 676 (after line 2), at the end of subitem 4(3), add:

; (d) each eligible entity that was bound immediately before the reform commencement by the original award, but only in relation to outworker terms.

(330) Schedule 4, item 4, page 676 (line 3), after “employer”, insert “or eligible entity”.

(331) Schedule 4, item 4, page 676 (line 5), after “employer”, insert “or eligible entity”.

(332) Schedule 4, item 4, page 676 (line 10), after “employer”, insert “, an eligible entity”.

(333) Schedule 4, item 4, page 676 (line 13), after “employer”, insert “, eligible entity”.

(334) Schedule 4, page 676 (after line 22), after item 5, insert:

5A Saving provision relating to awards and orders made before 26 March 2004

If:

(a) before the start of 26 March 2004, a term of an award or order had the effect of requiring an employer of fewer than 15 employees to pay redundancy pay (within the meaning of the amended Act); and

(b) that term of the award or order continued in effect until immediately before the reform commencement; and

(c) immediately after the reform commencement, that term of the award or order:

(i) became a term of a pre-reform award because of the operation of item 4 of this Schedule; or

(ii) continued in operation as a term of a transitional award because of the operation of clause 4 of Schedule 13 to the amended Act; section 116L of the amended Act, or clause 27 of Schedule 13 to the amended Act, as the case requires, does not affect the operation of that term of the award or order and the term continues in effect as a term of the pre-reform award or the transitional award.

(335) Schedule 4, item 18, page 681 (line 24), omit paragraph 18(3)(b), substitute:

(b) in operation immediately before that commencement, or made after that commencement because of Part 8 of Schedule 14 to the amended Act.
(336) Schedule 4, item 20, page 682 (after line 18), after subitem (1), insert:

(1A) This item applies subject to:

(a) Parts 4 and 8 of Schedule 14 to the amended Act; and

(b) item 20A of this Schedule.

(337) Schedule 4, page 682 (after line 26), after item 20, insert:

20A Continuation of section 170MX proceedings under new provisions for workplace determinations

(1) This item applies if:

(a) a bargaining period was terminated on the ground set out in subsection 170MW(3) or (7) of the Workplace Relations Act 1996 before the reform commencement; and

(b) the Commission had not started to exercise arbitration powers in accordance with subsection 170MX(3) of the Workplace Relations Act 1996 before the reform commencement in relation to the bargaining period; and

(c) had this Act not amended the Workplace Relations Act 1996, the Commission would have been able to make an award under subsection 170MX(3) of the Workplace Relations Act 1996 after the reform commencement in relation to the bargaining period.

(2) Division 8 of Part VC of the amended Act applies in relation to the bargaining period (in accordance with item 19 of this Schedule) as if:

(a) the termination of the bargaining period were the termination of a bargaining period on the ground set out in subsection 107G(3) of the amended Act; and

(b) that termination happened on the reform commencement.

(3) A reference in this item to subsection 170MX(3) of the Workplace Relations Act 1996 does not include a reference to that subsection as it had effect because of repealed Division 2 of Part XV of that Act.

Government amendments on sheet PJ283—

(1) Schedule 1, item 71, page 165 (line 23), omit the heading to section 97.

(2) Schedule 1, item 71, page 165 (lines 24 to 27), omit subsection 97(1).

(3) Schedule 1, item 71, page 165 (line 30) to page 166 (line 3), omit subsection 97(3).

(4) Schedule 1, item 71, page 167 (line 19), omit “or section 97”.

(5) Schedule 1, item 71, page 168 (line 32), omit “sections 97 and 97A (which deal).”, substitute “section 97A (which deals)”.  

(6) Schedule 1, item 71, page 168 (lines 35 and 36), omit “sections 97 and 97B (which deal), substitute “section 97B (which deals)”.  

(7) Schedule 1, item 71, page 186 (lines 29 and 30), omit “sections 97 and 97A (which deal), substitute “section 97A (which deals)”.  

(8) Schedule 1, item 71, page 186 (lines 33 and 34), omit “sections 97 and 97B (which deal), substitute “section 97B (which deals).”  

(9) Schedule 1, item 71, page 193 (lines 21 and 22), omit “sections 97 and 97A (which deal), substitute “section 97A (which deals)”.  

Senator Wong—We do not propose to call a division on this but Labor wants to be recorded as opposing amendment (213).

The CHAIRMAN—The record will show that Labor asked for its view on amendment (213) to be expressed as opposed. The question is that the remaining government amendments be agreed to.

Question agreed to.

The CHAIRMAN—The question is that item 10 and sections 89C, 95C and 523 stand as printed.

Government amendments on sheet PN271—
(22) Schedule 1, item 10, page 27 (line 6) to page 41 (line 28), to be opposed.
(31) Schedule 1, item 71, page 66 (lines 14 to 30), section 89C to be opposed.
(92) Schedule 1, item 71, page 161 (lines 21 to 30), section 95C to be opposed.
(127) Schedule 1, item 71, page 283 (line 27) to page 284 (line 7), section 115B to be opposed.
(212) Schedule 1, item 240, page 481 (lines 11 to 24), section 523 to be opposed.

Question negatived.

The CHAIRMAN—The question is that schedules 1, 2 and 4, as amended, be agreed to and schedules 3 and 5 stand as printed.

Senator Wong—There are five opposition amendments on sheet 4768. I am seeking clarification. When they are put, we would like all of those to be put separately.

The CHAIRMAN—I believe they were to be encompassed in this resolution.

Senator Wong—We seek a vote on each of our amendments.

The CHAIRMAN—They are covered by this question.

Senator Wong—We ask that our five amendments each be moved separately.

The CHAIRMAN—My advice from the Clerk is that we can put those questions separately if it for the purpose of senators voting differently on each of the issues.

Senator Wong—Obviously I am not a mind-reader in relation to what senators might do. There have been senators who have voted on different amendments differently. We seek that they be put separately. Obviously we can have a minute between divisions if required.

The CHAIRMAN—I need an indication, Senator Wong.

Senator Murray—I indicate the position of the Democrats. We are quite content to vote the same way on each of those but we have no objection whatsoever to the Labor Party putting them separately if they wish. We would be supporting the Labor Party in those, but in our view the key schedule to be voted on by division is schedule 1.

The CHAIRMAN—I am advised that I can only put the questions separately where there is an indication that a senator will be voting differently. Otherwise I will—

Senator Faulkner—Mr Chairman, I rise on a point of order. I appreciate you have been so advised by the clerk but I would ask you to consider the application of standing order 84(3) in this instance, which states:

The President—

and I interpolate here—so, because the Senate is in committee, the Chairman—may order a complicated question to be divided.

It seems to me that what you are requesting of Senator Wong is some sort of indication on her behalf to speak on behalf of an extraordinary number of senators. Senator Wong is a very courageous person but maybe she is not that courageous. I would think it is competent for the senator to ask that the question to be put separately. It is competent for you as the chair to so order that the question be put separately.

The CHAIRMAN—Senator Faulkner, on the point of order, I am advised that there are past rulings of presidents that, where there are complex questions, it is at the discretion of the President. The President will only divide the question if there are already indications that senators will vote differently on the different parts of the question.

Senator Wong—I understand the Democrats and the Greens, and I think Senator Fielding but he is currently engaged, have no objection to this. I do not know whether the government does.
Senator Abetz—I am delighted at the prospect of some Labor senators voting differently on these five issues but, without delaying the Senate, if that is something that Senator Wong would like to do and there was unanimous agreement amongst senators that that should occur, one would imagine that it would be competent for the chair to so rule and order. If that is the case, we would not seek to stand in the way of that process.

The CHAIRMAN—I have spoken with the clerk and I will, under those circumstances—not setting a precedent—put the various schedules. The question is that schedule 1, as amended, be agreed to.

Senator Wong—Amended by our amendments?

The CHAIRMAN—Amended by the government amendments. If you are opposing the schedule, that is what we are doing. Your opposition is to vote against the schedule. The question is that schedule 1, as amended, be agreed to.

A division having been called and the bells being rung—

Senator Faulkner—Mr Chairman, I raise a point of order. Is there any reason that this debate and now this division are being conducted in the dark?

The CHAIRMAN—We do not know about it but the twilight is certainly beyond the control of the Senate. I understand that there are a range of storms in the region. The Senate is proceeding. I have called the division.

The committee divided. [4.45 pm]
(The Chairman—Senator JJ Hogg)

Ayes............ 35
Noes............ 32
Majority........ 3

AYES
Abetz, E. 
Barnett, G. 
Brandis, G.H. 
Chapman, H.G.P. 
Coonan, H.L. 
Ellison, C.M. 
Fierravanti-Wells, C. 
Heffernan, W. 
Humphries, G. 
Joyce, B. 
Lightfoot, P.R. 
Macdonald, J.A.L. 
McGauran, J.J.J. 
Nash, F. 
Patterson, K.C. 
Ronaldson, M. 
Scullion, N.G. 
Trood, R. 

NOES
Allison, L.F. 
Bishop, T.M. 
Campbell, G. * 
Conroy, S.M. 
Evans, C.V. 
Forshaw, M.G. 
Hurley, A. 
Ludwig, J.W. 
Marshall, G. 
McLucas, J.E. 
Murray, A.J.M. 
O’Brien, K.W.K. 
Sherry, N.J. 
Stephens, U. 
Stott Despoja, N. 
Wong, P. 

PAIRS
Calvert, P.H. 
Ferris, J.M. 
Vanstone, A.E. 
Watson, J.O.W. 

Bartlett, A.J.J. 
Brown, C.L. 
Carr, K.J. 
Crossin, P.M. 
Faulkner, J.P. 
Hogg, J.J. 
Kirk, L. 
Landy, K.A. 
McEwen, A. 
Moore, C. 
Nettle, K. 
Polley, H. 
Siewert, R. 
Sterle, G. 
Webber, R. 
Wortley, D. 
Brown, B.J. 
Ray, R.F. 
Milne, C. 
Hutchins, S.P. 

* denotes teller

Question agreed to.

The CHAIRMAN—I intend to put the following question which should dispose of the rest of the proposal—that is, that schedules 2 and 4 as amended be agreed to and schedules 3 and 5 stand as printed.
The committee divided. [4.50 pm]
(The Chairman—Senator JJ Hogg)
Ayes............. 35
Noes............. 32
Majority........ 3

AYES
Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Coonan, H.L. Eggleston, A. *
Ellison, C.M. Ferguson, A.B.
Fierravanti-Wells, C. Fifield, M.P.
Heffernan, W. Hill, R.M.
Humphries, G. Johnston, D.
Joyce, B. Kemp, C.R.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.I. Minchin, N.H.
Nash, F. Parry, S.
Patterson, K.C. Payne, M.A.
Ronaldson, M. Santoro, S.
Scullion, N.G. Troeth, J.M.
Trood, R.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, C.L.
Campbell, G. * Carr, K.J.
Conroy, S.M. Crossin, P.M.
Evans, C.V. Faulkner, J.P.
Forshaw, M.G. Hogg, J.J.
Harley, A. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. Moore, C.
Murray, A.J.M. Nettle, K.
O’Brien, K.W.K. Polley, H.
Sherry, N.J. Siewert, R.
Stephens, U. Sterle, G.
Stott Despoja, N. Webber, R.
Wong, P. Wortley, D.

PAIRS
Calvert, P.H. Brown, B.J.
Ferris, J.M. Ray, R.F.
Vanstone, A.E. Milne, C.
Watson, J.O.W. Hutchins, S.P.
* denotes teller

Question agreed to.

The CHAIRMAN—Pursuant to allotment of time agreed to on 1 December 2005, I now report the bill as amended.

The PRESIDENT—Order! The committee has considered the Workplace Relations Amendment (Work Choices) Bill 2005 and agreed to it, with amendments.

Adoption of Report

Senator ABETZ (Tasmania—Special Minister of State) (4.57 pm)—I move:
That the report from the committee be adopted.
Question agreed to.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (4.57 pm)—I move:
That this bill be now read a third time.

Senator WONG (South Australia) (4.57 pm)—On the third reading of this bill, I rise to put the view of the Labor Party in this place as we proceed to a final vote. It seems quite clear, from what has occurred over the last day and a half, that we will be losing this vote, and it will be Australian workers and their families who pay the price. Since mid-day yesterday, when we were confronted with this legislation and the 100 pages of amendments from the government which we got a half an hour before, we have seen this government consistently vote against those amendments which have been put by the crossbenches to this chamber to try and insert a modicum of fairness into this legislation. We have seen the foot soldiers on the other side—the foot soldiers in this trampling down of workers’ rights and the rights of Australian families—

The PRESIDENT—Order! Those senators not seeking the call, would you leave the chamber, or resume your seats. Senator Abetz, would you resume your seat.
Senator WONG—Some of us in this place think that this legislation deserves serious scrutiny. Clearly those on the other side do not. They have voted for a guillotine. They have voted to put through, as people have seen, hundreds of amendments very quickly. But, worse, in the last day we have seen this government voting against things like putting fairness into this legislation—something that is currently in the act that governs Australian workers’ entitlements. This government has voted on a number of occasions, in the last day and a bit, against the principle of a fair wage. I look forward to them explaining between now and the next election what is wrong with that great Australian value of a fair day’s pay. What was so bad about inserting ‘fairness’ into this legislation?

We have seen this government vote again and again against penalty rates. They do not want any guarantee of penalty rates, perhaps because they do not understand what that means for Australians and their families—working families who rely on penalty rates, on shift allowances and on overtime to augment their wages so they can put food on the table and so they can meet their mortgages. We have seen this government vote against meal breaks, against allowing Australians to have a bit of time off for a meal. And we have seen this government vote against pay equity. Can you believe it? In 2005 the government votes against the principle that women should be entitled to equal pay for work of equal value. We have seen this government vote that down and then have the gall to come into this chamber and tell the chamber and the Australian people that this legislation will be good for women. It is not good for women. Women are, as we have said, disproportionately reliant on the minimum wage. Sixty per cent of Australian working women are reliant on the minimum wage, and they will bear the brunt of this government’s refusal to ensure that there will be fair wages and fair conditions in this country.

We have seen this government support legislation which cannot be described as anything other than antifamily. This is legislation which removes the brakes on working long, irregular or unsocial hours. This is a government that believes that there should be no penalty on antisocial hours, a government that believes there should be no overtime rates for additional hours worked. It is a government that is removing through this legislation the certainty of hours that workers derive from rostering provisions in awards—simple things like getting some notice of when you have to be at work and when you do not have to be there so that you can organise your life, your child care and your family responsibilities.

This is what this government does not want. These are the protections and rights that Australians currently have that are being taken away by this legislation. This government is removing through this legislation the advances made in the work and family test case in August this year and removing the advances that the trade union movement, workers and particularly women have fought for for so many years. That case gained some advance in August this year and this government, with its numbers in the Senate, is trampling over those small advances which have been made. We have even heard Pru Goward, who is not known as somebody who takes Labor’s line, say to the Senate committee in relation to this issue that we are seeing the end of paid maternity leave. That is what is going to happen to women in this country, and those on the other side need to seriously think about how they can justify a position which removes so many provisions which protect family life, which removes so many provisions which were about ensuring
fairness for Australian women and Australian workers more generally.

This is legislation which entrenches a race to the bottom. This is legislation which means good employers will have to compete with bad employers, because bad employers will use all the aspects of this legislation which enable existing entitlements and existing rights to be stripped away. Good employers will have to compete with employers who do that. We know what will happen. We know we will see a race to the bottom. What we will see through this legislation is the sort of social model we see in America, and we in Australia have always stood against that. We have a proud tradition in this country of saying, ‘Australia believes in a fair day’s pay for a day’s work’. We have always believed that there is such a thing as a fair wage floor, a fair minimum wage. We have always said we in Australia do not want working poor. But this legislation will allow that, and this government will have to explain to the Australian people why they think it is a good thing. They remove fairness, they remove protections and they remove rights with this legislation.

We all know that the rhetoric, the spin and the words from the government are meaningless. They say, for example, that award conditions are protected. We know what sort of protection it is. New employees can be handed an AWA with a clause that says, ‘This AWA removes all rights to overtime, penalty rates, shift allowances, annual leave loading and a range of other matters.’ We know the AWA does not have to include things like redundancy pay, which I think has been in this country since 1984. Some of us were still at school then, but that right has been removed now.

This government is intent on creating the sort of situation that the Prime Minister has had in mind for many years. We know that what we are voting on now is a dream of an old man, a tired old dream which will turn into a nightmare for Australian families. That is what we are voting on now. It is not about creating a more productive Australia; it is not about creating an Australia where people can enhance their skills and build a real career and real security for themselves and for their families. It is about an Australia where there will be a race to the bottom, where we will have working poor and where people’s rights can be stripped away. The new minimum in this country is not the award system which has served Australian society well; the new minimum is the ordinary hourly rate and four minimum conditions. That is it. Everything that working people and their representatives have fought for for so many years, other than those four things plus the ordinary rate, can be stripped away.

We know what the real agenda is. John Howard made it very clear when he was shadow minister for industrial relations in 1992. He said:

… if somebody makes a capital investment in this country, they ought to be able to run that capital investment 24 hours a day, seven days a week, 365 days a year without penalty as to the time of the day or night that they run that investment.

You know what? He is going to deliver it now because he has the numbers in this place. He will deliver it, and that is what Australian workers will have to live with.

This legislation has never been about the technical aspects of workplace relations. This legislation has never been about some legal argument over whether X or Y applies. This legislation has always been about what sort of country we are. It has always been about what sort of Australia we are. This is not the Australia we want. We do not want an Australia where working people are given no choice. We do not want an Australia where there is a race to the bottom and we do not want an Australia in this century where so
many rights and so many entitlements can simply be stripped away.

I do not want to take up the fullness of my time—I know there are other senators who want to speak. Because of the short time this government has imposed, we have very little time to debate this bill. But I do want to finish on this issue: we may lose this vote. I think it is quite likely, given what we have seen over the last day and a half, that we will lose this vote. But we will not be beaten. We are not beaten. The lights may have just gone out in the Senate chamber, but they do not go out on the labour movement!

What this government have never understood as they abuse and revile trade union officials and those in the labour movement is what created the labour movement, what binds the labour movement and what has guaranteed such widespread support in the campaign against this bill by unionists and non-unionists alike. What binds us is a belief in our self-worth and also the worth of the person next to us. We have always understood that not only do we fight for our worth and our dignity, we also fight for the worth and the dignity of the person working alongside us. We fight for the principle of a fair go for all. We fight for a fair wage for a day’s work. We have always done this as a labour movement, and we will continue to do this as a labour movement. This fight is not over. We will fight this until the next election and beyond. This fight will continue, because we are here for the long haul. We have always been here for the long haul and, fundamentally, we fight for a fairer Australia.

The PRESIDENT—Senator Ronaldson.

Senator Fielding—Mr President, on a point of order: I know the practice in the Senate is to go from one side to the other. I happen to be on this side of the chamber.

The PRESIDENT—The practice has been to call one opposition senator and one government senator; one from that side and one from this side. You will get the call before 6 o’clock, Senator. I would not worry about it too much.

Senator RONALDSON (Victoria) (5.09 pm)—It is with great interest that I note the clapping from the gallery today. It is indicative of the fact that it is a very small group of people who are here today clapping the Australian Labor Party and the ACTU in relation to their views on Australian working men and women. But what they fail to acknowledge is that the great majority of Australian working men and women over the last four elections have been clapping the re-election of the Liberal-National Party government. There is a very good reason for that. There is a very good reason why working men and women around Australia have been applauding the re-election of this government. They know full well that, unlike the ACTU, it is this government that have protected working men and women in this country. They are acutely aware that, since 1996, we have created 1.7 million jobs, 900,000 of which were full time. They are acutely aware that, since 1996, their real wages—the real wages of working men and women in this country—have increased by 14.6 per cent, and they know full well that, under the 13 years of the Australian Labor Party government, it was 1.2 per cent.

The Labor Party are not the representatives of the working men and women in this country any longer. The Australian working men and women have made it quite clear at four elections that they trust this government to look after them. They trust this government to support them, and no amount of guffaws from those who have been trundled in here today to stand up the back will change the fact that we have been re-elected four times by Australian working men and women. Australians are acutely aware that the Australian Labor Party are now so intrin-
ically bound up with the ACTU that they can no longer represent working men and women. If we wanted a clearer example of the relationship between the Australian Labor Party and the ACTU, it has been over the last of 72 hours, where the shadow minister has been within two metres of an industrial representative of the ACTU, who is not on her staff. That is a clear enough indication. You will get no clearer indication of the relationship. I think the really sad part about the last three days is that we have finally had confirmation that the Australian Labor Party is quite simply incapable of cutting itself loose from the ACTU to genuinely represent Australian men and women. If you look across the chamber to the other side, there are 18 men and women who owe their existence solely to the union movement.

Opposition senators—And proud of it!

Senator RONALDSON—I accept that they may well be proud of that, but it does not change the fact that you owe your jobs to the trade union movement and, when you owe your job to one individual or one organisation, you cannot pretend to represent the wider Australian community. You can bleat as much as you like and you can put on your ‘proud to be union’ badges, but history will show that you forfeited the right to claim ownership of working men and women of this country in 1996, because you have single-handedly failed to accept any of the reform programs of this government—not one single reform program have you accepted. Not once in the interests of this country have you tried to have a bipartisan approach to any policy at all.

Take, for example, the GST. Talk about flip-flop on major policy! Where are you now? Is it being ripped up or is it staying there? You are incapable of making a decision in the interests of this country, totally incapable of making a decision. You have shown yourselves to be totally incapable of adequately representing working men and women in this country, and it is the grossest abrogation of what you stand for, the grossest abrogation of your responsibilities as members of the Australian Labor Party. And, when you abrogated your responsibilities to those men and women, you lost the right to represent them, and they made it quite clear to you that you had lost that right.

Senator George Campbell interjecting—

Senator RONALDSON—Get your facts right. If you want to start the personal stuff, we will talk about the 100,000 jobs around your neck, my friend. The other matter that we should be talking about today—and it has been proven over the last 72 hours—is the absolute obsessive hatred of the Australian Labor Party for employers in this country, their hatred of the small business community, which time and time again has come out in their speeches. As I said this morning, everyone in this place knows that under the present IR system there are bad employers. And, as I also said this morning, although they are capable of being bad employers, the great bulk of employers are good employers. You will never accept that, but it is a fact. The people who used to vote for you know that it is right, because they refuse to acknowledge the lies and innuendo in relation to industrial relations. So the great majority of Australian employers in this country, who could be bad employers if they wanted to, are not bad employers.

What is the reason for that? What is the reason for them not being bad employers when they have the opportunity to be, particularly in relation to the small business sector? As Senator Joyce said this morning, there are now more small business people in this country than there are trade union members. He articulated very clearly that there are more small business people in this coun-
try than there are members of the trade union movement. It is now quite clear that not only have you forgotten your own traditional base; you have now sent out a very clear message to the small business community that you will be dropping them off as well. You will stand condemned for that. The Australian working men and women will again show you, in about two years time, that you are incapable of representing them.

Senator MURRAY (Western Australia) (5.18 pm)—In 1996 I walked into the Australian Democrats party room to be told that I had been given the poisoned chalice of industrial relations portfolio holder. There were some smiles and grimaces because they knew what I was in for. What I was in for was this passionate clash of the titans on this issue. In 1996 the coalition had won power with a huge swing in votes and a huge mandate, but that mandate was not specific. If you recall, at the time of the election there was a small-target strategy and it was not clear exactly where the coalition would be going in terms of industrial relations. We saw their bill and the Democrats resolved to oppose the bill unless it was amended, and savagely amended.

The bill at that time did not go as far as the Workplace Relations Amendment (Work Choices) Bill 2005 has. It did not go anywhere near as far. No-one should misunderstand how extremely different this bill is to the 1996 bill, even as unamended. As you know, Mr President, the Australian Democrats said that the government had a right to have the passage of that 1996 bill if they could agree to the amendments. We made 176 amendments to that bill, and the result was that the heat came out of that debate, the act was made economically effective and was found to be socially acceptable. We have claimed since that we played a part in the good times to which that act has contributed, along with other issues.

So, when the government look at our situation, where we are adamantly and vigorously opposed to this bill, they should be asking why. It is because there is no continuity with the past. This breaks with the past. The Australian Democrats value the past. We say that this bill breaks with the broad consensus that we have enjoyed. I will repeat what I have said before about the broad consensus, which existed despite the clash of the titans. That broad consensus was that our workplace law should reflect the social contract that growing national and individual wealth should be accompanied by rising living standards and a comprehensive safety net for the disadvantaged and powerless in our society; and low or inadequate wages should be supported by a sufficiently comprehensive welfare system to ensure family stability and sustainability.

That broad consensus was that wages and conditions of work should bear in mind the family more than the individual; that governments and parliaments should determine law and regulation but that enterprises, unions and tribunals should determine the detailed content and decision of workplace relations; that independent specialist tribunals were preferred for conciliation, arbitration and determination rather than the courts; that collective labour and collective capital had primacy over individual arrangements; that statute was the dominant determinant of collective arrangements at work and common law the dominant determinant of individual arrangements; that industrial relations should be a multiple federal system, not a single national system; that it was justifiable to subordinate the economic to the social in the workplace by ensuring the living standards of the worst-off were consciously and deliberately raised; that health and safety and compensation for accidents or negligence should be a primary feature of workplace law.
This bill assaults the cultural, economic, social, institutional, legal, political and constitutional underpinnings of work arrangements in Australia. It aims to radically alter our work systems and values. Our problem with this is that we do not stand beholden to the unions or business. Our problem is that the case still, to this moment, has not been made that the economic and the social situation in this country desires or needs this radical change.

This change would not have happened if the Australian Democrats still held the balance of power in this chamber. When Queensland voted in a coalition foursome this is what they voted for. We cannot change the decision of the Australian people but we can say to the government of the day: ‘We think this is unwise. We think this is un-Australian. We think you are making not just an economic mistake, not just a social mistake, but a political mistake. We think this is faith based legislation. We think there is no evidence put down which verifies what you are doing on an economic case. We think there is plenty of evidence put down which verifies that the social situation of the poor, the disadvantaged, the people at the bottom of the rung in our society, can be made worse.’

I hope that I and my party are proven wrong. I hope with all my heart that those with faith on that side are proven right. I do not care if the result of this is the destruction of a government; what I care about is that for the next few years, and maybe forever, the workplace arrangements which have served this country so well and so effectively, which make us such a progressive and successful liberal democracy, have been cut away. As a migrant to this country, I resent the idea that what I came to is being cut away for a conservative, value-driven, faith based ideal which puts at risk those things which both sides of the house formerly had a broad consensus on.

Over the last nine years, our party have at times stood firm with the coalition to pass workplace law and we have been beaten up by the Labor Party for doing so. At other times, we have stood firm with the Labor Party in opposing legislative proposals by the coalition and we have been beaten up by them. We have been unafraid, we have been lonely and we have been small. But here today I tell you yet again, with the courage that this party have shown in these matters over many years, we do not support this legislation, we do not believe in it and we think it will be economically harmful and socially damaging. We oppose it.

Senator Fielding (Victoria—Leader of the Family First Party) (5.24 pm)—Family First proposed commonsense amendments to the Workplace Relations Amendment (Work Choices) Bill 2005 that would have guaranteed fair and decent wages and conditions for all Australian workers—amendments such as ensuring workers who work on public holidays are compensated in time and receive at least a day off in lieu, which is important so that families can have time together. We proposed amendments such as guaranteeing meal breaks, overtime and penalty rates, so that working at 2 am is not the same as working at 2 pm, and working on a Sunday is not the same as working on a weekday. Family First regret that, despite our best efforts in our discussions with the government, we were unable to persuade the government as to the merits of Family First’s amendments, which showed commonsense and were fair and reasonable. That is a tremendous shame.

Family First has been left with no choice but to oppose the bill because it fails to put Australian families first. Family First understands the importance of the economy and the need for a strong economy. Family First also understands the need to improve Australia’s industrial relations system. Family First
CHAMBER

recognises that there is room for legitimate debate about how the minimum wage is set as well as the argument that, at some point, a minimum wage must affect job creation. Family First therefore does not object to the establishment of the Fair Pay Commission, nor does Family First oppose setting up a national industrial relations system; however, Family First believes there are elements of this legislation that will impact directly on workers and families in negative ways, especially workers and their families on low incomes.

The assumption which underpins this bill is that there is a level playing field between all employers and all employees. But Family First does not believe this accords with reality—far from it, in fact. If that were the real world, there would be no such thing as low-paid workers. Family First believes society has an obligation to ensure that everybody, all Australians, earns a decent wage and has decent conditions, regardless of their bargaining position. I strongly believe that whatever good this bill may do will be undone by the negative effects on Australian workers and their families. Work is important and our economy is important. But we work to live; we do not live to work.

Overtime and penalty rates were introduced as the first family friendly measures to ensure there was a balance between paid work and family life. Family First believes it is vital to maintain that balance. While Family First acknowledges that overtime and penalty rates are not as effective as their originators would have hoped—in part because the concept has been corrupted by the market—these measures should remain until an alternative is proposed. In Family First’s view, this bill is not about work and family; this bill is about work or family. This is a choice that no Australian family should have to make.

Senator FAULKNER (New South Wales) (5.28 pm)—In my view, this is as bad as any piece of legislation we have seen in the history of the Commonwealth of Australia. It is unfair, it is divisive, it is extreme. It just stinks. We have heard throughout this debate an attack, yes, on trade unions, yes, on trade union officials, but also, of course, on working Australians. That has characterised this debate. I have to say that I have had an absolute gutful of it. I am proud to stand up in this third reading debate and, with my Labor colleagues and others from the cross-benches, say that we will be opposing this bill in the parliament and we will fight it beyond the decision in the Senate this evening.

I am also proud to say, of colleagues in the trade union movement and trade unionists who have defended and worked in the interests of working Australians, that we ought to thank those individuals for what they have done. I unashamedly associate myself with the trade union movement and thank them for their great achievements in over a century of struggle. I thank them for the eight-hour day, for eight hours work, eight hours sleep and eight hours for what we will, as it was described. I thank them for winning weekends for Australian workers, for winning, firstly, a 44-hour week and, secondly, a 40-hour week, and then the ACTU’s great efforts to win a 38-hour week. We have had the minimum basic wage since 1907 thanks to the efforts of the Australian trade union movement.

I thank them and appreciate the fact that we have equal pay and equal work because of that wonderful test case that was mounted by the ACTU in 1969, which meant that women could receive the same pay as men if they were proved to be doing work of equal value. I thank them also for equal pay for equal work for Indigenous Australians. I thank them for what they have done in relation to sick leave. I thank them for what they
have done in relation to maternity leave. I thank them for what they have done in relation to workplace safety. I thank them for what they have done in relation to paid holidays. And I thank them for what they have done in relation to superannuation.

I acknowledge the efforts of those trade union officials who have worked tirelessly in support of the working conditions of their members. It is often a thankless task, and you can see the level of criticism in this chamber that those decent Australians have received for working in the interests of others in the community, for wanting to improve the lives of working men and women in Australia and for wanting to ensure that Australian families are better off. I thank the trade union officials and the trade union movement for what they have been able to achieve, and I thank them for fighting this unfair legislation as hard as they have done.

This legislation is best characterised as un-Australian. It is un-Australian and it is unfair. It will rip away the working conditions of working men and women in this country, and it will affect all their families. These are conditions that have been hard fought and hard won. Most often, they have been matters decided in courts and tribunals. There have been incremental changes over decades and decades, fights that have gone on for year after year, conditions won which are now to be ripped away in legislation by this contemptible government. The point is that it is not trade unions that will be worse off; it is Australian workers and their families who will be worse off as a result of this legislation being passed in the parliament this afternoon. That is what will happen.

I heard in this debate—and it made me sick to hear the new terminology—that the government say they are not interested in workplace fairness; they are not interested in fairness; they are interested in harmony. I say to those who are experts in spelling and who have a dictionary with them: take out the ‘o-n-y’, because what you will have is workplace harm. You will have workplaces in this country which are much less satisfactory, less happy, less reasonable and less fulfilling places to be present in as a result of this legislation going through.

Of course, the government could not carry the argument themselves. They did not have the capacity to carry the argument in the chamber or elsewhere. They had to spend $50 million of Australian taxpayers’ money to support this corrupt change to the workplace relations legislation and laws in this country. They had to bludge on the taxpayers to mount their campaign. They did not have the capacity to argue it out themselves. They did not have the skill. They did not have it in them to mount the case.

As far as the debate in the parliament is concerned, there was a committee stage debate that was grotesquely truncated by the government. They could not afford a proper committee examination of this legislation—not at all. They had to truncate the committee debate. And this for a bill the size and weight of a house brick, 687 pages. This for an explanatory memorandum, again, the size and weight of a house brick, 565 pages. Then when we actually got to the debate itself, we had the government sleazily introducing 98 pages of government amendments, 337 government amendments, half an hour before the committee stage even began. If you did not like that, there were 133 pages of explanatory memorandum in relation to the new government amendments. That could not be provided until hours and hours after the debate began. What a grotesque manipulation of proper procedures. What an absolute disgrace. Talk about thumbing your nose at the parliament. Talk about thumbing your nose at the people of Australia.
I want to say this in conclusion. The Australian Labor Party was formed in 1891. We were formed in the interests of ensuring that working men and women had their interests protected. We have always looked after those Australians. That has always been priority for our party and it always will be. We have been around an awful lot longer than the Liberal Party and we will be around a lot longer to come, I can assure you, to fight in the interests of those Australian workers and to fight in the interests of those people who defend and protect their interests—the people who actually defend decency in our society and decency in our community—and in this parliament, of course, we defend integrity of process. That is what the Labor Party has always done. That is what we have done in this debate and that is what we will do into the future, regardless of the scandalous, despicable and contemptible decisions that this Senate is going to make courtesy of the Howard government this evening.

An incident having occurred in the gallery—

The PRESIDENT—Order! If we are going to have disruption from the gallery, I will clear the gallery. I would ask you to resume your seats.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (5.38 pm)—I know the hurt that would be experienced over the other side, because I experienced it when we came to native title and I saw the aspirations of all the people that the National Party represent being hurt by a government that brought in native title. So I can understand the feeling and the hurt that is over there at the moment and the hurt that is in the gallery, and I have some sympathy for it because I have experienced it. This is democracy, and it is not what you people on the other side or the people in the gallery want. The people made a decision when they elected a coalition government. They said, ‘We don’t want this continual argy-bargy between the Democrats and horse trading; we want to give a coalition a free rein.’ If we are wrong on this, you should be rejoicing, because if what you say is going to happen does happen and the sky does fall in, you will be back on this side of the chamber in three years time. I do not think that is going to happen for one minute. Why? Because I represent and I come from—

Senator Sterle—Doormats!

Senator BOSWELL—You are making a goose of yourself. You really are. You come down here with a union background and you have made a complete idiot of yourself for the time that you have been here.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left, when Senator Faulkner was speaking, this side of the house gave him a fair go. I ask you to do the same for Senator Boswell.

Senator BOSWELL—I represent a different view and a different voting section. I represent the country voters and, yes, they elect us. The people who are small business people—

Senator Carr interjecting—

Senator Sherry—The big end of town, that’s what you represent.

The PRESIDENT—Order, Senators Carr and Sherry!

Senator BOSWELL—Mr President, let them go. They are very upset at the moment. I can understand—they should be upset. But let me say, there is another point of view and it is the point of view of the 1.8 million small business people who have been kicked in the guts time and time again, when they could not get up when something went wrong and they could not dismiss someone and then they had to go and spend $15,000 in a court
or you had to pay $15,000 in go-away money. What comes around goes around. I tell you this, as an employer who employed 10 people, whether they were reps, storemen packers or secretaries in the office: no employer goes out there to dismiss or take rights away from people. If they do, they do not have any workers.

At the moment, the most precious commodity in Australia is labour. The most precious commodity out there in business today is having someone to work for you. It is even worse in rural Australia, where people have gone into the mines to earn themselves 160,000 bucks or 100,000 bucks; a truck driver can get $90,000. That is what is out there at the moment. When this legislation was put through, when these awards were structured, it was in 1907 and it was the Harvester case. Times have moved on. We have to compete overseas.

You were the people who removed the tariffs and rightly so. I did not think it would work. I must say, I was wrong and you were right. I thought removing the tariffs was going to crush Australia, but I was wrong. Now that the barriers have been removed we have to be competitive with other manufacturing countries. If we are not, it will not be the union reps who will be destroyed, it will be the small business people; it will be the workers. That is the way the structure works at the moment.

Senator Sherry—Chinese wages?

Senator BOSWELL—I have to have a structure that has to compete or are you going to rebuild the tariff wall to keep out China or any other country? You were the ones who removed it. You took the tariff walls down. You broke the tariff walls. You took the tariff walls down, you set this up and we have to be able to compete. If we cannot compete on imports of vegetables, citrus, meat or anything else, we are going to lose our way, and it is the workers who will be destroyed.

Unfair dismissals law was the straw that broke the camel’s back. That is what has driven small business to encourage them to support this legislation. Small business have been waiting for years for this legislation to come through. You made it vicious out there, where no-one could employ anyone with any confidence because, if it did not work out, there was a $15,000 penalty—go-away money. The coalition was elected, the people spoke and the people will speak again in three years. We have supported the Liberal Party on these issues, on Telstra and on IR because we believe it is right. In three years time, if we are wrong, we will be punished. If we are right—and I believe we will be right—

Senator Forshaw—Two.

The PRESIDENT—Order! Senator Boswell, ignore the interjections.

Senator BOSWELL—I will tell you, Senator Forshaw, if you are able to count. The reason we are putting this legislation through is that the National Party did win its seat and won the balance of power with the Liberal Party. You are sitting over there because the National Party won a seat.

Opposition senators interjecting—

The PRESIDENT—Order! Shouting and pointing across the chamber is grossly disorderly and I ask you to come to order.

Senator BOSWELL—Thank you, Mr President. The vote was taken, the decisions are made and you can speak and cry as much as you like. I have some sympathy for you because I was where you are in about 1987. The sun came up in the morning. There was damage done to rural and regional Australia by native title—

Opposition senators interjecting—
Senator BOSWELL—No, Senator, there was. I know exactly what you are feeling today, but you have to have the courage to get up, fight on and see if your predictions come true. I do not for one minute believe they will. I think that employment will increase and jobs will increase. Opportunities will increase and we will have a more prosperous Australia. Everyone should do very well out of it. If that is not the way it works out, you will be over here and we will be over there.

Senator Carr—Doesn’t that sum it up!

Senator BOSWELL—That is how democracy works in Australia.

Senator SIEWERT (Western Australia) (5.47 pm)—This is bad legislation. I said so in my speech on the second reading; I have said it repeatedly in committee. It is bad legislation. I tell you: employment is going to rise. Employment for lawyers is going to rise because there are so many problems with this legislation. People will have to have many lawyers. Workers will have to have lawyers to try to protect the rights that are being taken away. That is one area in which we know employment is going to improve. You just need to look at the lack of time we have had to debate and get advice on this legislation. Just today the Bills Digest for this bill popped up on my laptop. We have been debating this legislation, which is 700-odd pages, plus the memorandum, plus 100 pages of amendments. That is how flawed it is: there are 100 pages of government amendments plus a 50-page additional memorandum that we got as we walked into the chamber. On top of that the Bills Digest comes out today, when we are at the end of looking at the bill. How is that for being fair? How is that for just process?

Looking at some of the things that this is going to take away and what it is going to do. There will be no minimum or maximum working hours, no entitlement to a stable weekly income, no meaningful entitlement to overtime pay, no entitlement to higher rates of pay for unsociable hours, no legal entitlement to certainty of scheduling of your roster, no legal entitlement to a written statement of employment status, no legal entitlement to a record of pay or hours worked and no real job security for anybody. Not only are you exempt from unfair dismissal if you have a business with 100 workers, but also, because of the way the rest of the amendments are written, you can put people off for operational reasons. No one’s job is secure. There is no access to a career structure and no voice in the wage setting process of the Fair Pay Commission.

Let me talk about the Fair Pay Commission again. I moved an amendment to try to get the word ‘fair’ taken out of this legislation because it is not fair, no matter how the government tries to put it. It is not fair; let us have the Australian harmony pay commission. What a load of nonsense! The government will legislate for protection of the bosses but it will not legislate to protect people’s wages and make sure it is fair. If it is fair, put it in the legislation. The government legislates to put in the requirement to look after the economic side of things but it will not legislate to look after the workers of this country. Why? If it is implicit, make it explicit. It will not, so what it wants to do is obvious. It wants to be able to lower the minimum wage, which is what its bosses want. The bosses want to be able to lower their minimum wages, so that is what the government has legislated.

They keep saying they have legislated for the first time to protect people’s rights. They are actually legislating to take away people’s rights. Do not make any mistake about it; the
award system in this country is going. This is what this legislation does. In fact, what they are doing is legislating to take away people’s rights, not restore them. That is absolutely clear. They are taking away people’s rights. They are taking away people’s access to awards; they are lowering the minimum wage. It will lead to the development in this country of a class of working poor, particularly when you combine this with the legislation that we will probably be considering through the gag-and-guillotine process next week: the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005. Combine the two and they equal working poor in this country.

No, the sky will not fall in when we walk out of this chamber at six o’clock tonight; I do not think I have heard anybody on this side of the chamber say it will. These changes will be insidious. As people’s collective agreements come up, they will be put on the minimum standards. The sky will not fall in; the changes will be insidious. I am hoping that what this legislation does will become evident by the next election, because some of it will actually take effect after then, unfortunately. But hopefully some of what this legislation does will be evident before then.

I am sad that people in this country will be going onto lesser pay and poorer working conditions. The fact is that that should become evident sooner rather than later. The sky will not fall in, I agree. We did not say it would, Senator Joyce. We did not say the sky would fall in tonight, but conditions will get worse and worse. It will get worse as the minimum wage goes down, because the minimum wage will not drop tomorrow. It will take a little while for it to drop, in the same way that it took a little while to drop in Western Australia.

Senator BRANDIS (Queensland) (5.52 pm)—We have heard this evening from Senator Faulkner a remarkable and historic speech. As Senator Faulkner paid his tribute to the Australian trade union movement and the role of the Australian Labor Party, I could not help thinking that his speech took on a valedictory air. The problem for you, Senator Faulkner, is this: it may be that the Australian Labor Party has always identified itself with the interests of working people, but in this day and age fewer and fewer working people identify themselves with the Australian Labor Party. That is your problem. Fewer and fewer Australian working people find their aspirations captured by the Australian Labor Party. That is your problem. Fewer and fewer Australian working people choose to join trade unions. Fewer and fewer Australian working people identify themselves with the Australian Labor Party. That is your problem. Fewer and fewer Australian working people find their aspirations captured by the Australian Labor Party. And if you ever had any doubt about that, Senator Faulkner, do nothing more than consult the reflections of your protege, Mr Mark Latham; or, if you are not satisfied with Mr Mark Latham, consult the reflections of your predecessor as the Labor leader in this place, former senator John Button; or consult the
reflections of the former president of your own party, the Australian Labor Party, Mr Barry Jones, because all of them say the same thing.

It is not our side politics which is out of touch with the aspirations of Australian working people and Australian working families. Australian working people have voted with their feet by dropping out of Australian trade unions at a record rate so that today, as Mr Button pointed out, only some 15 per cent of Australian workers are unionised. Never before has the Australian Labor Party at a federal election fought from a narrower base. Never before has there been a non-Labor government in Australia to which Australian working people have entrusted more confidence. And why? Because in the last 10 years they have seen their wages rise steadily. Over the last 10 years, the net household wealth of all Australian households, but in particular the households of Australian working people, has grown. This has been a time of industrial peace and economic prosperity, and it is a time during the course of which the affairs of this nation have been superintended by a non-Labor government while the Labor opposition has drifted away from its historical antecedents.

Senator Faulkner interjecting—

The President—Order! Senator Faulkner, they gave you a fair go. I ask you to give them a fair go.

Senator Brandis—Senator Faulkner, I listened to you with silence and respect. And as I listened to you, the valedictory tone of your speech conjured a familiar air. I thought I had heard those words before. You said:

This legislation single-handedly unravels over 100 years of hard-won gains. Thousands upon thousands of Australian workers have sweated blood to achieve conditions that allow parents to have time with their kids, to have decent holidays, to have income security, to have leave to look after their children and to have weekends and recreation time to share with their families

... ... ...

the Labor Party and, more broadly, the labour movement will remain implacably opposed to this draconian and unAustralian bill.

Your words, Senator Faulkner, but they were not said this evening. They were said by you in this place nine years ago on 8 October 1996, when we debated the last workplace relations act amendment bill. And in the nine years since, your prophecy has been falsified by reality. Because, in the nine years since you made that prophecy, in the nine years since you uttered those words, in the nine years during the course of which your side of politics went on to lose three consecutive elections as it drifted further and further away from the aspirations of working Australians and Australian families, what have we seen? Steady growth in real wages for working Australians, but in particular for the poorest working Australians, unexampled in Australian history. Growth in household wealth, but in particular the household wealth of the poorest Australians, unexampled in Australian history. A time of peace, prosperity and industrial harmony—the opposite of your dire prediction of nine years ago.

Senator Faulkner, you know how much respect I have for you. You know how much respect I have for your deep sense of history. But I say to you from the bottom of my heart that you and the side of politics that you represent are on the wrong side of history because the movement of history, for at least the last half-century and indeed before, has been away from collectivisation, has been away from collective solutions, and has been towards the liberalisation of our economy and our society. It has been my side of politics—not all the time, but most of the time—which has led that movement. It is we who denationalised the nationalised industries in
the 1950s. It is my side of politics that ended the culture of dependency in the 1990s. And it is this side of politics, this historic occasion, which is striking a mortal blow against the culture that says only collective solutions can work in the workplace. You were wrong about history in the 1950s, you have been wrong about history in the last decade and you are on the wrong side of history tonight.

**Senator CHRIS EVANS** (Western Australia—Leader of the Opposition in the Senate) (5.59 pm)—I rise to, I suspect, conclude the debate. I note that none of the government senators have attempted to defend the Workplace Relations Amendment (Work Choices) Bill 2005. They have attacked the people in the gallery, they have attacked trade unionists and they have attacked members of the Labor Party, but they cannot defend the bill because it is indefensible. You cannot win the argument. You will win the vote, but you will not win the argument. We will fight you all the way to the next election, because you are wrong, you are unfair and your bill is un-Australian. We are proud of our relationship with the trade union movement; we are proud of defending workers and we will keep on doing it. You may think history is with you but mark down 2 December 2005, because it is the beginning of the end of this government. All you have spoken about tonight is ideology. You cannot defend the bill; all you can do is advocate your ideology.

**The PRESIDENT**—Order! The time allotted for consideration of the bill has expired. The question is that this bill be read a third time.

Question put:
That this bill be read a third time.

The Senate divided. [6.04 pm]
(The President—Senator the Hon. Paul Calvert)

**AYES**
Abetz, E. 
Barnett, G. 
Brandis, G.H. 
Chapman, H.G.P. 
Coonan, H.L. 
Ellison, C.M. 
Fierravanti-Wells, C. 
Heffernan, W. 
Humphries, G. 
Joyce, B. 
Lightfoot, P.R. 
Macdonald, J.A.L. 
McGauran, J.J.J. 
Nash, F. 
Patterson, K.C. 
Ronaldson, M. 
Scullion, N.G. 
Trood, R.

**NOES**
Allison, L.F. 
Bishop, T.M. 
Campbell, G. 
Conroy, S.M. 
Evans, C.V. 
Fielding, S. 
Hogg, J.J. 
Kirk, L. 
Lundy, K.A. 
McEwen, A. 
Moore, C. 
Nettle, K. 
Polley, H. 
Siewert, R. 
Sterle, G. 
Webber, R. 
Wortley, D.

Ayes…………… 35
Noes…………… 33
Majority……… 2

AYES
Abetz, E. 
Barnett, G. 
Brandis, G.H. 
Colbeck, R. 
Coonan, H.L. 
Ferguson, A.B. 
Fierravanti-Wells, C. 
Fifield, M.P. 
Hill, R.M. 
Johnston, D. 
Kemp, C.R. 
Macdonald, I. 
Mason, B.J. 
Minchin, N.H. 
Payne, M.A. 
Santoro, S. 
Troeth, J.M.

NOES
Allison, L.F. 
Bishop, T.M. 
Brown, C.L. 
Campbell, G. 
Carr, K.J. 
Crossin, P.M. 
Faulkner, J.P. 
Forshaw, M.G. 
Harley, A. 
Ludwig, J.W. 
Marshall, G. 
McLucas, J.E. 
Murray, A.J.M. 
O’Brien, K.W.K. 
Sherry, N.J. 
Stephens, U. 
Stott Despoja, N. 
Wong, P.
PAIRS
Calvert, P.H. Brown, B.J.
Ferris, J.M. Ray, R.F.
Vanstone, A.E. Milne, C.
Watson, J.O.W. Hutchins, S.P.
* denotes teller

Question agreed to.
Bill read a third time.

Senate adjourned at 6.07 pm
The following answers to questions were circulated:

**Minister for Health and Ageing: Overseas Travel**

(Question No. 716)

**Senator Chris Evans** asked the Minister representing the Minister for Health and Ageing, upon notice, on 4 May 2005:

For each financial year since 2000-01 to 2004-05 to date:

1. (a) What overseas travel was undertaken by the Minister; (b) what was the purpose of the Minister’s visit; (c) when did the Minister depart Australia; (d) who travelled with the Minister; and (e) when did the Minister return to Australia.

2. (a) Who did the Minister meet during the visit; and (b) what were the times and dates of each meeting.

3. (a) On how many of these trips was the Minister accompanied by a business delegation; and (b) can details be provided of any delegation accompanying the Minister.

4. Who met the cost of travel and other expenses associated with the trip.

5. What total travel and associated expenses, if any, were met by the department in relation to: (a) the Minister; (b) the Minister’s family; (c) the Minister’s staff; and (d) departmental and/or agency staff.

6. What were the costs per expenditure item for: (a) the Minister; (b) the Minister’s family; and (c) the Minister’s staff, including but not necessarily limited to: (i) fares, (ii) allowances, (iii) accommodation, (iv) hospitality, (v) insurance, and (vi) other costs.

7. What were the costs per expenditure item for each departmental and/or agency officer, including but not necessarily limited to: (a) fares; (b) allowances; (c) accommodation; (d) hospitality; (e) insurance; and (f) other costs.

8. (a) What was the total cost of air charters used by the Minister or his/her office or department; and (b) on how many occasions did the Minister or his/her office or department and/or agency charter aircraft, and in each case, what was the name of the charter company that provided the service and the respective costs.

**Senator Patterson**—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

The Hon Tony Abbott MP, as Minister for Health and Ageing, has not undertaken any overseas travel between financial years 2000-01 to 2004-05.

**Pregnancy Counselling Services**

(Question No. 1159)

**Senator Stott Despoja** asked the Minister representing the Minister for Health and Ageing, upon notice, on 7 September 2005:

1. Given that at least one Pregnancy Help counselling service advertises that its volunteers undertake an accredited course run by the Australian Federation of Pregnancy Support Services (AFPSS) and that this course is funded by the Government; can the Minister advise: (a) with whom is this training accredited; and (b) whether it is possible to obtain a copy of the training program.

2. Given that the same Pregnancy Help counselling service also advertises that its volunteers are ‘overseen’ by trained professionals; can the Minister advise: (a) the names of these trained profes-
QUESTIONS ON NOTICE

Senator Patterson—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) (a) and (b) The AFPSS is funded to provide sexual and reproductive health counselling services. This includes developing, implementing and monitoring appropriate counsellor training to support the national pregnancy 1300 line and the local services provided by affiliated agencies. The training course developed and delivered by the AFPSS, “Counselling Skills Development Course for Pregnancy Workers”, is recognised as a professional development short course by the Australian Counselling Association and can be credited towards ongoing professional development requirements for counsellors. This course has been reviewed by the AFPSS and a new training manual is in the final stages of preparation by the AFPSS.

(2) (a) and (b) The AFPSS currently employs a Counselling Skills and Development Officer who holds the following qualifications: Master of Education; Bachelor of Nursing; Bachelor of Education; and Certificate of Humanistic Psychology & Counselling, and has also commenced a PhD in Education on the subject of development, evaluation and education of counsellors. In the interests of privacy, I am not prepared to disclose the name of this individual employee.

(c) Counsellors who work on the AFPSS national pregnancy 1300 line, or work within agencies affiliated with the AFPSS to provide pregnancy counselling are professionally supervised by suitably qualified and experienced individuals with local knowledge. Counsellors have access to senior, experienced counsellors at all times for debriefing sessions, direction and guidance.
These experienced personnel provide ongoing assistance and support to counsellors to meet the assessment criteria specified for accreditation as a pregnancy counsellor.

(3) Volunteer counsellors have access to senior counsellors at all times for debriefing sessions, direction and guidance. Senior counsellors provide ongoing assistance to counsellors to meet the assessment criteria specified for accreditation as a pregnancy counsellor. In addition, counsellors are required to have a minimum standard of skills and knowledge before they commence counselling, and to demonstrate ongoing skills maintenance and improvement over time, including the undertaking of a regular skills assessment with nominated senior counsellors.

(4) (a) and (b) The AFPSS has policies and protocols in place, including guidelines on reporting, which provide direction to volunteers on where assistance and advice can be found in fulfilling their obligations as counsellors and to the AFPSS.

Counsellors have access to senior counsellors at all times for debriefing sessions, direction and guidance. Counsellors are required to demonstrate ongoing skills maintenance and improvement over time, including the undertaking of a regular skills assessment with nominated senior counsellors.

(5) The Australian Government funds only the AFPSS. It does not provide either direct or indirect funding to groups affiliated with the AFPSS.

(a) As far as the Department of Health and Ageing can determine, there are no accredited national guidelines for pregnancy counselling in Australia. However, there are accredited courses for counsellors.

(b) The AFPSS requires that counsellors trained and accredited by the AFPSS practise non-directional counselling and provide information about all pregnancy options available. The AFPSS has a system in place for regular review of information and fact sheets provided to counsellors for use during counselling sessions. These materials are assessed by medical professionals for currency and accuracy before they are issued to counsellors.

(c) The AFPSS is funded to provide support for women experiencing difficulties with pregnancy. The role of the counsellors is to provide non-directional counselling and to provide information about all pregnancy options available, including termination, to support decision making by the individual accessing the counselling service.

(d) Counsellors with the AFPSS are not currently required to be accredited with an external professional agency. The AFPSS is currently considering including external accreditation in the requirements for counsellors under its revised training program. The AFPSS requires that all pregnancy counsellors with the AFPSS and affiliated agencies receive AFPSS accreditation, through completing the Counselling Skills Development Course for Pregnancy Workers. This course is recognised as a professional development short course by the Australian Counselling Association and can be credited towards ongoing professional development requirements for counsellors.

(e) The Telephone Support, Information and Counselling Association (TISCA) does not accredit organisations. The AFPSS is an active member of TISCA and TISCA’s counselling guidelines and standards are incorporated in the AFPSS education modules and training.

(6) The AFPSS has introduced a new system for the initial and ongoing accreditation of counsellors which ensures a minimum standard of skills and knowledge before people begin their roles as pregnancy counsellors, and that these skills are maintained and improved over time. Prospective counsellors are required to attain a minimum set of competencies through training followed by a system of familiarisation, observation, supervised practise and further competency assessments within their centres before receiving initial accreditation.
All counsellors are required to attain a minimum number of professional development points per annum in order to maintain their accreditation and therefore their ability to remain a counsellor under the umbrella of the AFPSS. In addition, each year pregnancy counsellors are required to undertake a phone or face to face skills assessment.

- Points would be accrued through some of the following activities:
  - attendance at AFPSS counselling training
  - local centre ongoing training
  - phone practice sessions with approved skilled person
  - clinical supervision with approved person
  - attendance at external training (approved)
  - web based learning.

In addition, the AFPSS is in the process of appointing counselling trainers in most larger regions. This will expand the numbers of people available to provide training support for counsellors at the local level.

(7) (a) and (b) These are grants funding decisions of the government of the day.

(8) The AFPSS has both a service and privacy complaints protocol in place, which can be accessed on its web site: www.pregnancysupport.com.au

**Defence: Depleted Uranium**

**(Question No. 1338)**

*Senator Allison* asked the Minister for Defence, upon notice, on 31 October 2005:

(1) Will the new ‘smart bomb’ to be used by the Royal Australian Air Force Hornet fighter-bombers contain depleted uranium (DU); if so, what quantity of DU is each bomb.

(2) Did the ordnance used during the joint United States of America and Australian military exercises held in Queensland in 2005 contain DU; if so, what quantity was dispersed over what area.

*Senator Hill*—The answer to the honourable senator’s question is as follows:

(1) No.

(2) No depleted uranium munitions were used during Exercise Talisman Sabre 05.