THE SENATE

MILITARY REHABILITATION AND COMPENSATION (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2003

WORKPLACE RELATIONS AMENDMENT (BETTER BARGAINING) BILL 2003

WORKPLACE RELATIONS AMENDMENT (SIMPLIFYING AGREEMENT-MAKING) BILL 2004

WORKPLACE RELATIONS AMENDMENT (CHOICE IN AWARD COVERAGE) BILL 2004

INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT BILL 2003
POSTAL SERVICES LEGISLATION AMENDMENT BILL 2003

A NEW TAX SYSTEM (COMMONWEALTH-STATE FINANCIAL ARRANGEMENTS) AMENDMENT BILL 2003

Second Reading

SPEECH

Monday, 1 March 2004

BY AUTHORITY OF THE SENATE
Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (4.10 pm)—I table revised explanatory memoranda relating to the Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004 and the Workplace Relations Amendment (Choice in Award Coverage) Bill 2004 and move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in Hansard.

Leave granted.

The speeches read as follows—

CORPORATIONS (FEES) AMENDMENT BILL (No. 2) 2003

The Corporations (Fees) Amendment Bill (No. 2) 2003 (the Fees Bill) complements the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 (the CLERP Bill) which was introduced into the Parliament today.

Under the CLERP Bill, a Financial Reporting Panel is established to resolve disputes between ASIC and companies in relation to accounting treatments in company financial reports. The Fees Bill provides for a fee to be levied on companies that refer matters to the Panel.

CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM AND CORPORATE DISCLOSURE) BILL 2003

Today the Government is introducing the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003. The bill is the ninth stage in the CLERP program and builds on previous reform measures in the areas of accounting standards, directors’ duties, fundraising, takeovers and financial services reform.

The bill is designed to modernise business regulation and foster a healthy and vibrant economy. It progresses the principles of market freedom, investor protection and quality disclosure of relevant information to the market.

The bill contains significant measures covering financial reporting and corporate disclosure more generally. Its provisions will achieve better disclosure outcomes, enhance auditor independence and improve enforcement arrangements in the event of corporate misbehaviour.

The bill generally implements the reforms proposed in the CLERP 9 policy proposal paper (released in September 2002) and also reflects the outcome of consultations since that time.

In addition, the bill responds to the recommendations of the Ramsay Report (Independence of Australian Company Auditors) and takes account of relevant recommendations of the report of the Joint Committee of Public Accounts and Audit (Report 391 Review of Independent Auditing by Registered Company Auditors). The bill also incorporates recommendations from the HIH and Cole Royal Commissions.

A draft bill was released for public comment on 8 October 2003 with submissions closing on November 10. Over 50 submissions were received and these were considered in finalising the bill. The Business Regulatory Advisory Group, chaired by Mrs Catherine Walter, has considered the policy proposals and the provisions of the bill over a number of months. I would like to take this opportunity to thank members of BRAG for their participation in the process and the significant contribution they have made in developing this bill.
I also note that, consistent with the requirements in the Corporations Agreement 2002, State and Territory ministers have been consulted regarding these reforms through the Ministerial Council for Corporations and have approved the bill.

**Audit Oversight and Auditor independence**

An important part of these reforms is the establishment of a regulatory framework governing audit oversight and independence. Currently the regulation of the auditing profession is predominantly the responsibility of the professional accounting bodies. Legislative requirements are minimal and piecemeal. The bill therefore substantially builds on the current Corporations Act requirements and establishes a comprehensive framework governing the audit standard setting process and auditor independence.

**FRC oversight**

The role of the Financial Reporting Council (FRC) will be expanded to include oversight of the audit standard setting arrangements. The Auditing and Assurance Standards Board (AUASB) will be reconstituted with a Government appointed Chairman under the oversight of the FRC, similar to the Australian Accounting Standards Board. Auditing standards made by the AUASB will be given legislative backing.

The Government considers that the measure to give auditing standards the force of law will significantly enhance the rigour of the standards applying to the auditing profession and improve ASIC's enforcement capabilities.

To facilitate the implementation of this policy, the bill provides for transitional arrangements whereby auditing standards which have been issued by or on behalf of Australia's professional accounting bodies will be given immediate legal backing. Standards subject to the transitional arrangements are subject to a two-year 'sunset' clause, during which time the AUASB would be expected to revise the standards and re-issue them as disallowable instruments made under the Corporations Act.

The objective of the provision is to provide a seamless transfer from the existing regime, under which standards are enforced through the professional codes of the accounting bodies, and the new arrangements.

During the consultation period, industry noted that the existing body of professional standards are not sufficiently robust, and not in a form suitable, to be given force of law immediately as part of the transition to the new arrangements. Much of the profession's concern appears to be driven by the fact that criminal penalties will attach to a breach of these standards. In this regard, I recognise the profession's argument that some of the standards contain significant blocks of guidance which are not suitable for enforcement and were never intended to form part of the rules by which auditors need to abide.

The bill will retain the transitional provision and thereby bring the existing standards within the legislative framework at the earliest opportunity. However, for the purpose of addressing the profession's concerns, the bill provides that, during the first two years after the commencement of the Act, an auditor will not commit an offence by contravening the requirements of either a legislative provision requiring audits to be conducted in accordance with auditing standards or with the provisions of an auditing standard. This would only apply in relation to professional standards that are given the force of law on commencement of the Act.

While this would mean that the criminal sanctions of the Act would not be available where an auditor contravened a requirement, it would still be possible for wrongdoing by an auditor to be referred to the Companies Auditors and Liquidators Disciplinary Board or drawn to the attention of a professional accounting body for appropriate disciplinary action.

The FRC will also have an oversight and monitoring function in relation to auditor independence. This role will include advising the Minister on the nature and overall adequacy of the systems and processes used by:

- auditors to ensure compliance with independence requirements; and
- professional accounting bodies for planning and performing quality assurance reviews of audit work.

**Auditor independence**

In addition to the oversight arrangements, the bill contains a number of measures to promote auditor independence.
The bill introduces a general standard of independence and a requirement that auditors provide directors with an annual independence declaration.

The bill also prohibits a number of specific employment and financial relationships between auditors and their clients which are considered to compromise independence.

A waiting period of 2 years will apply to partners of an audit firm or directors of an audit company directly involved in an audit before they can take up a directorship or senior management position with an audit client.

Consistent with the recommendations of the HIH Royal Commission, the bill also includes a restriction on more than one audit partner joining an audit client as a director or taking a senior management position.

The bill requires auditor rotation after 5 consecutive years. In light of concerns surrounding the impact of this requirement on smaller audit firms and those operating in rural and regional areas ASIC will be able to extend the period after which rotation is required to up to 7 consecutive years.

The bill also requires listed companies to disclose in their annual directors’ report the fees paid to the auditor for each non-audit service, together with a description of the service. In addition, the annual directors’ report of each listed company must include a statement by directors that they are satisfied that the provision of non-audit services does not compromise the auditor’s independence. This also reflects the recommendations of the HIH Royal Commission.

The exposure draft of the bill reflected the HIH recommendations relating to the general standard of independence and cooling off periods applying before an auditor can move into a directorship or senior management position on the audit client. The bill has been amended since then to reinstate the original CLERP proposals in these areas. Following consultations on the exposure draft of the bill, a range of concerns were raised as to the practical implications of the HIH recommendations in these areas.

The Government supports the policy intent of these recommendations; that is, to ensure auditors are independent from their clients. However, it is also necessary to ensure that regulatory requirements are appropriate for the Australian market. In relation to these two matters, the bill will achieve the same functional outcomes as proposed by Justice Owen but will do so in a way that promotes certainty for auditors in discharging their obligations and will take into account the nature of the Australian market.

**Continuous disclosure and infringements**

One of the principles of Australian market regulation is that timely disclosure of relevant information is crucial to ensure that markets are well informed. The continuous disclosure regime is one way in which effect is given to this principle.

The bill will give ASIC greater flexibility to deal with contraventions of the continuous disclosure provisions of the Corporations Act by strengthening the enforcement mechanisms for continuous disclosure.

The maximum civil penalty that a court can impose on a body corporate will be increased from $200,000 to $1 million, but remain at $200,000 for an individual.

ASIC will be able to seek civil penalties against persons involved in a contravention of the continuous disclosure provisions.

ASIC will also be able to issue an infringement notice containing a financial penalty to a disclosing entity in relation to less serious contraventions. There are adequate safeguards to ensure that ASIC does not abuse this mechanism and the Government will review its operation two years after the provisions commence.

The first step in the process of issuing an infringement notice is that ASIC, after consulting the relevant market operator, gives the disclosing entity a written statement setting out the reasons for believing the entity has contravened the continuous disclosure provisions.

It must then give the disclosing entity an opportunity to appear at a private hearing before ASIC, give evidence and make submissions in relation to the alleged contravention.

It is only then that an infringement notice can be issued. The contents of the notice are specified, and the penalties are tied to the market capitalisation of the relevant disclosing entity.
ASIC may only publicise compliance with an infringement notice, and is limited in how it may do this. While compliance forestalls court action, if an entity fails to comply, ASIC cannot enforce the infringement notice. Instead, it must decide whether or not to initiate court action.

Should ASIC decide to initiate legal action, the fact that an infringement notice has previously been issued will have no bearing on the subsequent proceedings.

**Remuneration disclosure**

The bill also introduces a number of measures designed to enhance transparency and accountability in relation to decisions surrounding director and executive remuneration.

Details of directors’ and executives’ remuneration will need to be disclosed clearly in a marked section of the annual directors’ report—to be known as the remuneration report. Shareholders will be given an opportunity to comment on the content of the report and vote on a non-binding resolution to adopt the remuneration disclosures.

The vote is a mechanism for shareholders to directly and clearly communicate their views to the board of directors at a company general meeting. It will assist directors to more accurately assess the opinion of shareholders on remuneration than would otherwise be possible from discussion and comment at a general meeting alone.

The vote does not detract from the authority and responsibility of directors to determine executives’ remuneration and the vote is advisory only. This recognises that it is the proper function of directors to determine executives’ remuneration. It also recognises that directors are ultimately responsible to shareholders for decisions they make, including decisions on executive remuneration.

However, by requiring that shareholders have the opportunity to clearly express their views on a detailed remuneration report, this amendment will enhance transparency and will improve accountability between directors and shareholders.

Consistent with the current provisions of the Corporations Act, directors and senior managers will be required to disclose information on their remuneration. The disclosure requirements will be extended to apply to the corporate group and disclosure of the top 5 senior managers in the group will also be required.

The bill also amends the shareholder approval requirements in relation to directors’ termination payments. It is proposed that the existing exemptions from the requirement to seek shareholder approval in respect of damages for breach of contract and agreements entered into before a director agrees to hold office will no longer apply where the payments exceed a certain limit.

I consider these measures will substantially improve the information available to shareholders and enhance the accountability of directors.

**Other measures**

The reforms in the bill are wide ranging and also include:

- The establishment of a Financial Reporting Panel to resolve disputes between ASIC and companies in relation to accounting treatments in company financial reports.

- The reconstitution of the Companies Auditors and Liquidators Disciplinary Board to ensure that a majority of persons hearing matters are non-accountants.

The bill also:

- Introduces a specific licensing obligation for financial services licensees to have adequate arrangements for managing conflicts of interest; and

- Implements proportionate liability in respect of economic loss or damage to property.

Overall, this bill will implement significant reforms in the area of financial reporting and corporate disclosure more generally and will bring our regulatory framework into line with world’s best practice.
AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) AMENDMENT BILL 2004

Inadequate management of chemicals, from production through to disposal, has the potential to lead to considerable human health and environmental problems. The level of concern is reflected in the significant attention given to chemical management issues both internationally and domestically.

During the 1990s, international concerns about trade in some hazardous chemicals led to the development of international agreements on chemical management to promote shared responsibility and cooperative efforts to protect human health and the environment. A key driver underpinning these international agreements is to provide assistance to developing countries and countries with economies in transition, whose assessment capabilities and regulatory regimes may not be as sophisticated as those of more industrialised nations, such as Australia.

The Australian Government is committed to supporting effective and balanced approaches to global cooperation on human health and the environment. This is most recently evident in the Howard Government's announcement of its intention to ratify:

- the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and

An important aspect of many international agreements is that they allow countries importing hazardous chemicals to more fully understand and manage the risks associated with their use. In particular, they may contain information sharing strategies and obligations relating to the control of certain chemicals of international concern.

The amendments contained in the Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004 further enable Australia to fulfil its role in the international community as it relates to the management of pesticides under consideration by the international community because of particular human health and/or environmental concerns.

Specifically, the amendments provide powers for regulations to be made enabling the collection of prescribed information about prescribed chemicals, including:

- chemicals that are listed in prescribed international agreements to which Australia is a party;
- chemicals that are otherwise being considered (including for listing) under prescribed international agreements to which Australia is a party;
- chemicals identified in, or otherwise being considered under, other prescribed international agreements;
- chemicals that may be encompassed within prescribed international negotiations in which Australia is a participant.

In addition, the proposed amendments will broaden the scope of the regulation-making power to ensure that the 'use or other dealings' relating to specified chemicals can also be appropriately controlled. Without this amendment, there is a gap in the scope of the existing domestic powers to meet the obligations of the Rotterdam and Stockholm conventions.

Significantly, the regulations will only be able to seek information on, and/or control, those chemicals in a manner that falls within the scope of the prescribed international agreements.

The amendment and any regulations thereof will be implemented taking into account the need for consistency with Australia's obligations under international agreements applying to chemicals in international trade.

To emphasise the significance of compliance with Australia's obligations under international conventions and the potential for significant adverse impacts from failing to comply with national control mechanisms, the amendments also provide several offence and penalty provisions dealing with:

- Failure to provide information about import, export, manufacture, use or other dealings;
Failure to supply information in a timely manner;

Failure to keep and retain adequate records in certain circumstances;

Provision of false and misleading information (which may attract a significant penalty of 300 penalty units because of the potential to result in serious adverse human health and environmental impacts in overseas jurisdictions).

The Howard Government is serious about protecting human health and the environment from inappropriate use of chemicals. These amendments further demonstrate Australia's commitment to participate effectively in international agreements such as the Rotterdam and Stockholm conventions.

INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) AMENDMENT (ROTTERDAM CONVENTION) BILL 2004

The Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Bill 2004 (the Rotterdam Convention Bill) makes a number of changes to the Industrial Chemicals (Notification and Assessment) Act 1989 (the Act). The Act establishes a system of notification and assessment of industrial chemicals to protect health, safety and the environment; and provides for registration of certain persons proposing to introduce industrial chemicals. The Act also provides for Australia to comply with obligations under international agreements.

The proposed changes would enable Australia to give full effect to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The amendments enhance the domestic information gathering powers of the Director of the National Industrial Chemicals Notification and Assessment Scheme—for implementing the Convention, and facilitate information exchange between Australia and the other Parties to the Convention. The amendments also allow for the exchange of information on regulatory activities that provide for a national ban or restriction on the use of a chemical.

The changes in the Rotterdam Convention Bill complement the amendments to the Agricultural and Veterinary Chemicals (Administration) Act 1992 which will also give effect to Australia's obligations under the Convention that relate to pesticides. The Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004 is therefore being introduced at the same time as the Rotterdam Convention Bill to allow for cognate debate of both Bills by Parliament.

The objective of the Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous industrial chemicals and pesticides in order to protect human health and the environment from potential harm.

The Convention also contributes to environmentally sound use of these hazardous chemicals, by facilitating information exchange about their characteristics. It provides for a national decision-making process on the import of these chemicals, and disseminates those decisions to Parties. The Convention also provides for importing Parties to receive information on a chemical being exported from a country that has banned or severely restricted its use on human health and/or environmental grounds.

In recent decades, the movement of chemicals in world trade has occurred at a faster rate than the flow of information about their risks. Inadequate management of chemicals can lead to harmful consequences for human health and the environment, as well as having a negative impact on trade. Governments and other organisations have been working to develop worldwide systems to transmit information which will allow risks to be recognised and addressed before any negative consequences should occur. While Australia and many other developed countries have established appropriate procedures aimed at chemical safety within their borders, many developing countries lack the capacity to assess chemical risks in order to enforce regulations, resulting in significant risks to human health and the environment both within and beyond their borders.

The voluntary Prior Informed Consent Procedure (known as 'PIC') that commenced in 1989, was designed as an information exchange procedure to help countries make informed decisions on whether to receive future shipments of certain hazardous industrial chemicals and pesticides. The PIC Procedure provided a mechanism to communicate decisions on whether a country would import particular hazardous chemicals to other participating countries, which were then expected to abide by those decisions. Having participated in the voluntary PIC
procedure since 1992, Australia has contributed actively and constructively to address problems of chemical management at the international level.

Although the original PIC Procedure was regarded as a successful model, it was still voluntary and not enforceable, so it was considered by the international community to lack sufficient force. It was agreed that mandatory controls would provide a better basis for greater certainty and commitment by participating countries towards achieving the aims of the PIC scheme. Accordingly, negotiations on an internationally legally binding instrument commenced, resulting in the Convention which was adopted and opened for signature at a Diplomatic Conference held in Rotterdam in September 1998.

To date, 73 countries have signed the Convention. As it was expected to be several years before the Convention entered into force, an interim PIC Procedure was adopted by Signatories to the Convention. This interim Procedure mirrors that contained in the Convention itself and is administered by the United Nations Food and Agriculture Organization (FAO) and the United Nations Environment Programme (UNEP).

The Australian Government demonstrated its commitment by signing the Convention on 6 July 1999 and participating in the interim PIC Procedure. The interim PIC procedure will cease after the Convention enters into force on 24 February 2004. Fifty countries have now ratified the Convention.

Chemicals can be listed in the Convention if they meet the criteria of the Convention. This includes being banned or severely restricted in at least two countries in different PIC regions (or in one country for a severely hazardous pesticide formulation) because of the hazards they present to human health and/or the environment.

These chemicals incur exporting obligations. Currently five industrial chemicals, 21 pesticides and five severely hazardous pesticide formulations are listed in the Convention.

The Convention does not apply to narcotic drugs and psychotropic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals (including human and veterinary drugs), chemicals used as food additives, food, or small quantities of chemicals which are imported for research, analysis or personal use.

Globally, the Convention will be especially helpful to developing countries, whose assessment capabilities and regulatory regimes may not be as sophisticated as those of more industrialised nations. By sharing information, the Convention endeavours to help countries importing those chemicals to understand more fully, and to manage, the risks associated with their use. In this way, ratification would provide an efficient and effective mechanism to assist countries, particularly developing countries in our region, including Pacific Island states, to adopt and maintain sound chemical management, consistent with Australian policy in the region.

In summary, the changes proposed in this Bill are necessary to give effect to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

The changes will allow the Director of NICNAS to collect the necessary information domestically about regulatory actions taken in relation to industrial chemicals and facilitate information exchange to other similar overseas regulatory authorities that are Parties to the Convention. The Director will also provide the information collected domestically to the Designated National Authority in Australia for industrial chemicals.

Under the Bill, the Designated National Authority has responsibility for liaison involving information exchange with the Convention Secretariat and regulatory authorities of other countries that are Parties to the Convention. The Designated National Authority in Australia for industrial chemicals is the Department of the Environment and Heritage.

Participation in the Convention will not affect Australia’s national capacity to use, restrict or otherwise regulate chemicals domestically, all decision-making will remain with Australian governments.

The Convention aims to facilitate information exchange between Parties on hazardous industrial chemicals and pesticides. For a chemical restricted or banned by a Party on human health or environmental concerns, the Convention requires that the Party notify the importing Party prior to the export. The Convention gives importing countries the power to make an informed decision on which chemicals they want to receive and exclude those chemicals they cannot manage safely.

Australia would benefit from ratification of the Convention because it would enhance Australia’s capacity to influence international efforts to address chemicals issues. Furthermore it would increase Australia’s access
to information on hazardous chemicals. It would also provide an efficient and effective mechanism to assist countries, particularly developing countries in our region, to adopt and maintain sound chemical management that is consistent with Australian policy in the region.

Further, Australia's ratification of the Convention would demonstrate Australia's ongoing commitment to supporting effective and balanced approaches to global cooperation to improving the environment. It would also help promote and protect Australia's health, environmental and trade interests through Australia's participation in decisions made under the Convention.

MILITARY REHABILITATION AND COMPENSATION BILL 2003

The Military Rehabilitation and Compensation Bill 2003 is the Government's detailed response to the findings of the inquiry into the Black Hawk disaster and the recommendations of the Tanzer Review of Military Compensation for a new scheme that recognises the distinctive nature of military service.

This bill sets in place the most comprehensive changes in military compensation legislation in nearly two decades.

From the commencement date, planned for 1 July 2004, the new scheme will cover all injuries or conditions arising from service in the Australian Defence Force (ADF).

This bill has no impact on current veterans or war widows who are receiving benefits under the Veterans' Entitlements Act 1986 (VEA). Current beneficiaries under the Safety Rehabilitation and Compensation Act 1988 (SRCA) will continue to receive their benefits under that Act.

An exposure draft of the bill was published in June this year. Subsequent consultation with the veteran and defence force communities has been important in developing the legislation.

Several changes resulted from the consultation process, among them:

- inclusion of a further choice of part lump sum and part periodic payments for permanent impairment;
- extension of the time allowed to choose between a lump sum and weekly payments from three to six months; and
- eligibility for the Special Rate Disability Pension safety net payment for those who are unable to work more than 10 hours per week—this encourages some part time work for eligible members.

Governance

The new scheme will be administered by an independent Military Rehabilitation and Compensation Commission, supported by the Department of Veterans' Affairs.

Rehabilitation

Rehabilitation is emphasised and aimed at providing injured members with the support they need to make a full recovery and to return to work where possible. Assistance provided will be sensitive to an individual's needs and circumstances. Protocols will be developed in consultation with Defence and ex-service organisations to document the manner in which rehabilitation is managed.

The bill also addresses the need for assistance in the transition to civilian life for ADF members being discharged on medical grounds.

Compensation

The bill adopts the VEA's beneficial “beyond reasonable doubt” standard of proof for warlike and non-warlike service and the normal civil standard of “reasonable satisfaction” for peacetime service claims. It uses the Statements of Principles from the VEA in linking injury, disease or death with service.

There will be two types of compensation available to injured members—economic loss and non-economic loss.
Compensation for economic loss will be through incapacity payments. These payments will match, and in many cases, surpass payments under the VEA and the SRCA.

A safety net will provide a choice for eligible veterans between receiving taxable incapacity payments up to age 65, or a tax-free Special Rate Disability Pension payment for life.

Commonwealth-funded superannuation benefits will be taken into account when calculating incapacity payments, so a Commonwealth benefit is not paid twice, extending the practice that already applies under the SRCA to Commonwealth Public Servants and members of the Australian Defence Force.

Permanent impairment payments are non-economic loss compensation. For warlike and non-warlike service, these payments will match the VEA, while members who are severely injured will have their compensation enhanced.

In most cases, permanent impairment payments for injuries from peacetime service will be enhanced from those available under the SRCA.

Members entitled to the maximum permanent impairment compensation will receive the same amount regardless of whether they were injured on warlike, non-warlike or peacetime service. In addition they will receive a lump sum payment for each dependent child.

**Death**

For eligible partners and dependants of members who die as a result of ADF service, the bill combines the best elements of existing entitlements. For widowed partners, benefits include:

- an additional aged-based amount of up to $41,200 for death connected to non-warlike or peacetime service, and up to $103,000 for death connected to warlike service; and

- a choice of a periodic payment equivalent to the VEA war widow’s pension, or its lump sum lifetime equivalent.

Dependent children may be eligible for a lump sum death benefit, initially set at $61,800 plus a weekly allowance.

These benefits are in addition to military superannuation benefits, free lifetime health care for widows through the Gold Card, and ancillary benefits including education allowances for dependent children.

**Treatment**

This bill blends the VEA and SRCA regimes for medical treatment. Where members have accepted conditions that do not require regular, on-going treatment, payment will be made for reasonable costs of treatment required.

Where members require ongoing treatment, care will be provided using the VEA Gold and White Repatriation Health Cards.

**Continuation of Veterans' entitlements**

A number of entitlements currently provided in the VEA will continue to be available, including the service pension for warlike service, income support supplement for widowed partners, funeral benefits and Gold Card at age 70 for veterans with warlike service.

**Conclusion**

The Military Rehabilitation and Compensation Bill and the associated Transitional and Consequential Provisions Bill are proof of this Government's commitment to a military-specific rehabilitation and compensation scheme that will meet the needs of all Australian Defence Force members and their families in the event of injury, disease or death in the service of our nation.
Today I have also introduced the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003.

The Government is very conscious of the need to make things as easy as possible in the new scheme especially in the early transition period.

I am pleased to say that this bill provides for members who have service on both sides of the commencement date to make a deliberate choice to take advantage of the new Military Rehabilitation and Compensation Scheme benefits.

A member who suffers an injury or illness after that date will be able to combine prior impairments from the SRCA and the VEA with the new arrangements to get the best possible outcome.

Importantly, this bill will ensure that equivalent income taxation and income and assets testing rules apply to the new scheme in the same manner as applies under the VEA and the SRCA.

The Government has also recognised the need for all compensation entitlements to be administered by a single body whether they arise under the VEA, the SRCA or the new scheme.

This bill enables the new Military Rehabilitation and Compensation Commission to take responsibility for the operation of the SRCA as it relates to claims from Defence service, currently managed on behalf of Comcare and the Department of Defence by the Department of Veterans' Affairs.

The Government has decided not to proceed with the proposal to offset future grants of the VEA Special Rate (the T&PI pension)—by the Commonwealth-funded component of superannuation. It would be unreasonable to treat differently two veterans with the same service and the same incapacity.

WORKPLACE RELATIONS AMENDMENT (BETTER BARGAINING) BILL 2003

This Government is committed to continuing our programme of workplace relations reform, to enhance our living standards, our jobs, our productivity and our international competitiveness. The Government will continue to promote a more inclusive and cooperative workplace system where employers and employees talk to each other, making agreements on wages, conditions and work and family responsibilities subject to a safety net of minimum standards.

The overwhelming majority of Australian employees in the federal workplace relations system are now employed under enterprise or workplace agreements—whether individual or collective.

Enterprise bargaining has benefited both employees and employers. Employees have gained better wages, more relevant conditions, more jobs and greater workplace participation. Businesses have gained higher productivity, increased competitiveness, and lower industrial dispute levels.

Employers and employees have embraced workplace bargaining. Since 1991, more than 53,000 collective agreements have been formalised under the federal system alone, with thousands more under state bargaining systems. In addition, more than 380,000 AWAs have been approved since early 1997. By the end of June 2003, over 1.6 million employees were covered by current federal registered collective wage agreements, including approximately 162,100 employees under collective agreements made directly between employers and employees. A further 176,400 or so employees were on AWAs as at June 2003.

This bill will ensure that the bargaining process continues to benefit workplaces by ensuring this process is as user friendly as possible.

Cooling-off periods

During protracted disputes, parties often lose sight of their original objectives. Cooling-off periods allow negotiating parties to step back from industrial conflict and refocus on reaching a solution which works for the business and employees in question.

The Australian Industrial Relations Commission currently cannot order a cooling-off period in the case of a protracted dispute. The Commission has used the provisions in section 170MW to order de facto cooling-off
periods, to provide a circuit breaker in particularly difficult bargaining disputes, but it is not able to do this in all situations where a cooling-off period may benefit the parties. This needs to be rectified so that the Commission can do its job properly.

Proposed section 170MWB would allow the Commission to order a cooling-off period if it will assist the parties in resolving the issues between them. The duration of a cooling-off period is a matter for the Commission's discretion.

The Commission will be able to extend the cooling-off period (once only) on the application of a negotiating party, after hearing the other negotiating parties.

If the Commission suspends the bargaining period or extends the initial suspension, the Commission will inform the negotiating parties that they may attend private mediation or ask the Commission to conciliate the dispute.

Suspensions by third parties

This bill also seeks to address the harm that some industrial action causes third parties. Industrial action by negotiating parties can impact upon, or aim to harm, third parties who are not directly involved in the dispute—for example the clients of health, community services and education systems and other businesses.

Currently, there is no scope for third parties to apply to the Commission for relief from threatened and ongoing significant harm they may be experiencing due to industrial action occurring during a bargaining period. The Commission can provide indirect relief to third parties using the provisions of section 170MW, which operate in limited circumstances, but only through the Commission's initiative, or on application by the Minister or a negotiating party.

Proposed subsection 170MWC will give the Commission discretion to suspend a bargaining period for a specified period, on application by, or on behalf of, an organisation, a person or a body directly affected by the industrial action, other than a negotiating party, or the Minister.

Proposed subsection 170MWC(1) will require the Commission to consider a number of factors to determine whether a suspension is appropriate, including whether the action is threatening to cause significant harm to any person other than a negotiating party.

It may be relevant to the Commission's consideration that the significant harm is presently occurring, but the provision only requires that the action is threatening to cause such harm.

The extension provisions are the same as those for cooling-off periods.

The purpose of the provisions is not to detract from the existing rights of employees to take industrial action. They simply provide the Commission with a remedy to address the impact of industrial action on the welfare of third parties who are not directly involved in a dispute.

These amendments deliver on promises the Government made earlier this year to amend the Workplace Relations Act, as part of the higher education reform package.

Industrial action taken in concert is unprotected

Elements within the union movement have attempted to orchestrate a return to industry level bargaining, conducting their negotiations across a range of employers or an industry and ignoring the needs of individual enterprises and their employees.

Amending section 170MM will protect genuine bargaining and clarify that industrial action is unprotected action where it is taken in concert with employees of different employers.

Protected action and involvement of non-protected parties

Currently, protected industrial action can be taken by employees of different but related businesses. This right is inconsistent with genuine workplace bargaining.

Subsection 170ML will be amended so that two or more employers cannot be treated as a single employer for the purpose of identifying certain action as protected action.
Industrial Action before expiry of agreement

Protected industrial action should not be available during the life of the agreement. Parties should stick to their agreements and all agreements have dispute resolution provisions to deal with disagreements that occur during the life of the agreement.

The full court of the Federal Court concluded in the Emwest decision that protected industrial action may be taken where a certified agreement has not passed its nominal expiry date but the action is to pursue claims not covered by the agreement.

Subsections 170MN(1) and 170MN(4) will be amended to clarify that no industrial action can take place during the life of an agreement.

Claims not related to employment relationship

The Electrolux decision has also raised questions as to whether protected industrial action can be taken in relation to claims which do not pertain to the employment relationship. Again, this has lead to uncertainty for employers and employees in their bargaining processes. Protected industrial action is a mechanism for allowing parties negotiating certified agreements to take legally sanctioned industrial action to support their claims. If protected industrial action was allowed about any claim made by the parties, this would exceed the appropriate and sensible boundaries for the right to take such action.

Subsection 170ML will be amended to clarify that protected industrial action is only available to pursue claims which pertain to the employment relationship.

Conclusion

This bill recognises that the Government's workplace reform has brought benefits to the Australian economy —more jobs, better wages, higher productivity, increased competitiveness and fewer strikes. This bill will clarify some emerging uncertainties.

WORKPLACE RELATIONS AMENDMENT (SIMPLIFYING AGREEMENT-MAKING) BILL 2004

Workplace bargaining has benefited Australia economically, socially and industrially. The Workplace Relations Act 1996 provides a wide range of bargaining options, recognising that different workplace arrangements will suit different employers and different employees.

This government will continue to strive for a simpler and more accessible workplace relations system which focuses on workers and their jobs rather than the needs of the system itself.

The government desires to simplify further the processes for making and approving collective and individually negotiated agreements so that employers and employees at each workplace can make these agreements with minimum technical requirements and cost.

This bill proposes amendments which are for the most part procedural and technical in nature but which will, nonetheless, significantly simplify making agreements in the federal system. The bill also enhances protections for employees who choose to make Australian Workplace Agreements (AWAs) with their employers.

Certified agreements

The proposed amendments to the procedures for making certified agreements are intended to:

- make agreement making at the workplace level easier and more widely accessible;
- reduce the delays, formality and cost involved in making a certified agreement;
- prevent unwarranted interference by third parties in agreement making; and
- remove barriers to the effective exercise of agreement making choices.
The amendments specify that the 14-day consideration period for a proposed certified agreement does not recommence if a new employee begins work during this period.

Where an agreement is made directly with employees and the proposed agreement is undergoing minor changes before the formal agreement process, the Australian Industrial Relations Commission will gain discretion to waive the requirement to recommence the consideration period with each variation to the proposed agreement, provided the Commission is satisfied that this would not be detrimental to the employees whose employment would be covered by the agreement.

Employers and employer organisations have expressed concerns that a union which has elected to be bound by an agreement made directly with employees may effectively prevent the variation, extension or termination of the agreement, even if the variation has majority employee support.

This bill allows organisations bound to a certified agreement made directly with employees the opportunity to make submissions regarding any proposed extension, variation or termination, but removes their right to veto such proposals.

There is no statutory requirement for the Commission to hold formal hearings for certification of agreements, but it has become standard practice. Unnecessary formal hearings cause disruption and additional cost. In most cases, an application for certification (or variation, extension or termination) of a certified agreement could be dealt with expeditiously and with minimal cost on the basis of written applications only. The legislation will explicitly allow the approval, variation, extension or termination of a certified agreement without a formal hearing. Hearings will only be required where the employer or an employee has requested one and the commission is satisfied that there are reasonable grounds for the request.

Extended Agreements

The Bill introduces the option of five-year certified agreements in appropriate circumstances. These agreements will be known as extended agreements. Allowing for extended agreements recognises that some businesses and projects are likely to benefit from a stable workplace relations environment created by agreements that last for more than three years, which is the current maximum term. These amendments mark a significant development in the federal workplace relations system that reflects the government's confidence in the maturity of employers and employees to reach mutually beneficial bargaining outcomes at the workplace.

The new option of extended agreements of up to five years duration will be balanced by safeguards for employers and employees. Parties bound by an extended agreement will be able to ask the Commission to reassess the agreement after it has been in operation for three years to see if it still meets the no-disadvantage test. If the Commission finds the extended agreement no longer meets the no-disadvantage test, the parties will have the option of varying the agreement so it does meet the no-disadvantage test. If not varied or terminated within three months from the Commission's finding, the agreement will be deemed to have passed its nominal expiry date. Parties will be able to bargain for a replacement agreement under the Act.

Australian workplace agreements

There is no doubt that AWAs have found significant support among employers and employees. However, time consuming, costly, complex and formal procedures for making an AWA have reduced their accessibility. Some parties, particularly small and medium businesses without in-house human resource experts, are reluctant to use AWAs.

Existing filing and approval requirements will be consolidated into a one-step process. As is currently the case, the Employment Advocate will approve AWAs, with provision for referral to the Australian Industrial Relations Commission where there is doubt about whether an AWA passes the no-disadvantage test.

At present, AWAs cannot come into effect immediately the parties have reached agreement. This should be an option for parties who wish to implement their new arrangements immediately. The bill will enable AWAs to take effect from the day of signing, unless the parties specify a later date.

The bill will allow employees to sign AWAs at any time after receiving from the Employment Advocate an information statement and an explanation of the effect of the AWA. As an additional protection, an employee party to an AWA will be able to withdraw consent to the AWA within a cooling-off period, which will be five days from the date of signing for new employees and 14 days for existing employees.
An employer is required to satisfy the Employment Advocate that the employer did not act unfairly or unreasonably in failing to offer AWAs in the same terms to comparable employees. This obligation is incompatible with the concept of individual agreement making and will be removed by this bill.

The current scope of the Employment Advocate’s powers to reconsider or revoke AWA decisions is unclear. The bill will remove this uncertainty by giving the Employment Advocate an express power to revoke AWA decisions. This power will only be able to be exercised with prospective effect.

The Employment Advocate will also be empowered to recover a shortfall in entitlements on behalf of employees in circumstances where an AWA or related agreement is revoked or stops operating in certain circumstances.

These will be important enhancements to the protections for employees and reflect the government’s commitment to a balance between flexibility and protection for employees. I commend the bill to the Senate.

WORKPLACE RELATIONS AMENDMENT (CHOICE IN AWARD COVERAGE) BILL 2004

This bill will amend the Workplace Relations Act 1996 to ensure that the workplace relations system better meets the needs and circumstances of business, particularly small business. This bill demonstrates that the government is serious about reducing unjustified third party interference and workplace relations red tape for small business.

There is a compelling case for the passage of this bill. A vibrant and innovative small business sector is crucial to Australia’s economic growth and social welfare. The changes introduced in 1996 with the Workplace Relations Act significantly improved access for small business employers and employees to the workplace relations system. Many small businesses in the federal jurisdiction now have a greater choice of agreement types, including non-union agreements and individual agreements. However, further reform is required to maximise the opportunities for small business growth, and to drive unemployment down even further.

Many small businesses are not members of registered employer organisations and, consequently, are not represented in the Australian Industrial Relations Commission’s hearings and cases. They often do not have the resources or opportunity to influence commission proceedings and outcomes. The changes implemented by this bill are intended to make the commission and its processes more responsive to small business.

The bill contains amendments that will enhance the ability of small business to resist attempts to rope them into federal awards. A dispute with an employer with fewer than 20 employees will only be taken to exist, in a roping-in or log of claims process, where the union demonstrates that it has a member employed by the employer. The identity of individual union members, however, will be kept confidential.

Where an alleged dispute is notified, for any business, on the ground that the employer has not agreed to demands set out in a log of claims, the commission would be required not to make any finding of dispute, unless satisfied:

- the log of claims, when served, was accompanied by a notice containing prescribed information—the prescribed information is intended to explain the status of a log of claim and explain employers’ rights in relation to logs of claims;
- the alleged dispute was not notified until at least 28 days after service of the log;
- the party notifying the alleged dispute had given the employer at least 28 days notice of the time and place for hearing of the dispute notification; and
- the log of claims did not include any demand requiring conduct or provisions contrary to the freedom of association provisions of the act, or outside the scope of the employment relationship.

The bill will also require the commission to inquire into the views of identified small business employers affected by the making of an award, rather than only taking into account the views of employers who go to hearings.
In introducing this bill, the government is demonstrating its commitment to making the workplace relations system better meet the needs and circumstances of business, particularly small business. This is vital to maximise the opportunities for growth and innovation for the approximately 1,122,000 private sector, non-agricultural, small businesses in Australia. These businesses account for 96 per cent of all businesses—and are the engine room for jobs growth in our economy. It is clearly in the public interest to open the door to the new jobs that can be created by small business if we continue to ease the pressure that excessive industrial regulation presents for Australia's hardworking small business men and women.

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INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT BILL 2003

The Industry Research and Development Amendment Bill is a bill to amend the Industry Research and Development Act 1986.

The bill clarifies that the Department of Industry, Tourism and Resources controls, and is accountable for, program finances, not the Industry Research and Development Board.

The amendments remove an administrative anomaly and clarify and confirm the financial accountability arrangements for innovation, currently, and into the future.

The amendments remove the Board's power to commit and approve the expenditure of Commonwealth funds under the Financial Management and Accountability Act 1997.

Under the Financial Management and Accountability Act, it is the Chief Executive officer of the Department of Industry Tourism and Resources who is ultimately responsible for the administered funds appropriated to the Department, not the IR&D Board.

In practice, the amendments will result in little difference to the existing operating procedures under the various innovation and research and development programs.

Currently, the Board delegates its financial functions to officers of the Department of Industry, Tourism and Resources but under the existing Act retains some responsibility for Commonwealth finances.

By removing the Board's financial responsibilities, the bill enables the Board to focus on the assessment and prioritisation of applications—where its expertise lies—and not on managing funds.

This bill also clarifies that the Board provides advice on innovation programs, such as those related to commercialisation, in addition to providing advice on research and development programs.

As well as enabling the Board to concentrate on its core business, the amendments will help safeguard individual Board members from any personal liability stemming from their membership of the Board.

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POSTAL SERVICES LEGISLATION AMENDMENT BILL 2003

The Postal Services Legislation Amendment Bill 2003 implements decisions of the Government, to address regulatory and consumer issues relating to the current postal regime, by amending the Australian Postal Corporation Act 1989, referred to as the Act, and several other Acts.

The bill is intended to provide greater consumer and social benefits by providing independent oversight of Australia Post's service performance and operational activities and by legitimising a number of existing practices within the postal services market.

Specifically, the bill provides the Australian Communications Authority, the ACA, with responsibility for overseeing and reporting on the supply of postal services and extends the current responsibilities of the Australian Competition and Consumer Commission, the ACCC, in relation to Australia Post. The bill also introduces measures to legitimise the current business practices of document exchange and aggregation services.

There is currently limited oversight or regulation of Australia Post's performance in the delivery of services: the Ombudsman can investigate complaints and report to Parliament; and the Auditor-General has a statutory
obligation to monitor Australia Post's compliance with prescribed standards. There is also limited competitive pressure to drive efficiencies and quality in the delivery of services because of Australia Post's ongoing monopoly over the carriage of certain letters.

The proposed role of the ACA will be to provide independent oversight of Australia Post's performance in the supply of postal services and to report on its findings. Through this process, it is intended that the ACA will identify any particular or systemic problems in the delivery of services and bring those to the attention of Australia Post and the public. The ACA is considered to be the most appropriate organisation to carry out these functions because of its current role in relation to oversiting the delivery of telecommunications services.

As part of its oversight responsibilities, it is also proposed that the responsibility of the Australian National Audit Office to monitor and report on Australia Post's compliance with prescribed performance standards regulations be transferred to the ACA and that the ACA take over responsibility from Australia Post for calculating the cost of providing the statutory community service obligations. The ACA already has responsibility for calculating the cost of the telecommunications universal service obligation.

In relation to the prescribed performance standards, the bill also amends the Act to provide the Minister with a discretion to exempt Australia Post, in certain circumstances, from the requirements to prepare service improvement plans when it has failed to meet a minimum standard. These circumstances could, for example, be when the reason for the failure is due to factors outside of the control of Australia Post, such as a natural disaster, or if Australia Post has already taken action to address the failure.

The Act currently provides for regulations to enable the ACCC to inquire into disputes about the rate of reduction offered by Australia Post to its bulk mail customers. In view of Australia Post's monopoly over the carriage of certain letters and its legislated power to determine the terms and conditions under which services are provided, in the absence of agreement between the customer and Australia Post, this provision is considered to be too narrow. The bill, therefore extends the regulation making powers to provide for the ACCC to inquire into disputes about any of the terms and conditions of a bulk mail service and not just the rate of discount offered.

The bill also contains measures to allow the ACCC to require Australia Post to keep records about the financial relationship between different parts of Australia Post's business, and to publish reports. These amendments are intended to address concerns of some competing businesses, such as newsagents, that Australia Post is cross-subsidising its competitive services with revenue from its reserved, monopoly services. The amendments will ensure transparency in Australia Post's accounts and identify any areas of cross-subsidisation. The amendments will also facilitate the ACCC's task of reviewing any proposed increases in the prices of Australia Post's reserved services such as the standard postal rate.

The additional costs incurred by the ACCC and ACA, as a result of these new functions, will be recovered from Australia Post by means of a levy, the details of which are set out in the bill. The costs will be reviewed at the end of the first 12 months of operation of the ACCC and ACA functions.

The Act currently provides Australia Post with the exclusive right to carry letters within Australia subject to a number of exceptions set out in the Act. These exceptions include the carriage of letters for the purposes of lodging them with Australia Post under a bulk interconnection service and the carriage of letters in the course of a document exchange service. The bill contains amendments which will extend the current provisions in relation to these two exceptions and, thereby, legitimise the current practices of aggregation and document exchange businesses.

Aggregation and document exchange businesses provide valuable, alternative services to other businesses, particularly small businesses. Aggregation services aggregate and barcode the mail of small mail generators to enable them to qualify for the bulk mail discounts offered by Australia Post for volume based, barcoded, lodgements of mail. Document exchange services can provide time-critical deliveries of specialised documents on behalf of architects, doctors or lawyers, for example. The continued viability of these businesses is, therefore, of some considerable importance.

As the legislation currently applies, the carriage of letters from the small business to the aggregation service provider is still reserved to Australia Post. To facilitate the operation of these aggregation services, the bill contains provisions to amend the bulk mail exception in the Act to include the carriage of letters from the customer to the aggregator.
The document exchange provisions in the Act currently allow for the carriage of mail, in the course of a document exchange service, from one document exchange service centre to another, or within a document exchange service centre. However, the carriage of mail between the customer of the document exchange and the document exchange centre is still reserved to Australia Post. As this carriage is an integral and long standing part of the service provided by document exchanges, the bill contains provisions to remove this carriage from the reserved service and, thereby, legitimise current practices.

To ensure that the amendment has no unintended effect, the bill sets out certain conditions which must be met by the document exchange service and its members before the exception can apply. These include requirements that members must choose to be members, pay a fee for the service, be given a unique identifier by the document exchange service and the DX service provider must have provided a separate receptacle for each member to lodge and collect letters. Members who have their mail delivered or collected from them will also be required to be businesses or government or other service provider etc and not members of the general public and they will be entitled to send and receive documents through the document exchange service.

A NEW TAX SYSTEM (COMMONWEALTH-STATE FINANCIAL ARRANGEMENTS) AMENDMENT BILL 2003

This bill amends the A New Tax System (Commonwealth-State Financial Arrangements) Act 1999. The bill will facilitate the operation of the Act by implementing three measures, which have been agreed to by all of the States and Territories.

The bill will enable the Commissioner of Taxation to account for all GST refunds when determining the amount of GST revenue collected and to be provided to the States and Territories. In 2003-04, it is estimated that the States and Territories will receive $31.7 billion in GST revenue.

Currently, the Act does not allow the Commissioner to deduct all GST refunds when determining GST revenues. In particular, the Act excludes GST refunds under the Tourist Refund Scheme, and GST refunds to international organisations, diplomatic missions and visiting defence forces.

As a result, the Commissioner's determination overstates GST, resulting in States and Territories receiving more GST revenue than is actually collected.

The bill will fix this problem. It will ensure that the Commissioner is able to account for all GST refunds when determining GST revenues for 2003-04 and future years.

The bill will also introduce a mechanism to allow payments to a State or Territory to be adjusted, as it comes off Budget Balancing Assistance, to fully account for any over or underestimate of payments in a previous financial year.

The bill also makes minor changes to the statutory deadlines for a number of determinations required under the Act, in order to improve the timing of these determinations.

Full details of these measures are contained in the explanatory memorandum and I commend the bill.

Ordered that further consideration of the Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004 and the Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Bill 2004 be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

Debate (on motion by Senator Mackay) adjourned on the remaining bills.

Ordered that the bills be listed on the Notice Paper as nine orders of the day, as follows:

(a) Corporations (Fees) Amendment Bill (No. 2) 2003 and Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003;

(b) Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004 and Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Bill 2004;

(c) Military Rehabilitation and Compensation Bill 2003 and Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003;
(d) Workplace Relations Amendment (Better Bargaining) Bill 2003;
(e) Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004;
(f) Workplace Relations Amendment (Choice in Award Coverage) Bill 2004;
(g) Industry Research and Development Amendment Bill 2003;
(h) Postal Services Legislation Amendment Bill 2003; and