

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VOTES AND PROCEEDINGS**

No. 53

THURSDAY, 21 NOVEMBER 1996

1 The House met, at 9.30 a.m., pursuant to adjournment. The Speaker (the Honourable Bob Halverson) took the Chair, and read Prayers.

**2 INTERNATIONAL TRANSFER OF PRISONERS BILL 1996**

Mr Williams (Attorney-General and Minister for Justice), pursuant to notice, presented a Bill for an Act relating to the transfer of prisoners to and from Australia.

Bill read a first time.

Mr Williams moved—That the Bill be now read a second time.

*Paper:* Mr Williams presented an explanatory memorandum to the Bill.

Debate adjourned (Mr L. D. T. Ferguson), and the resumption of the debate made an order of the day for the next sitting.

**3 INTERNATIONAL TRANSFER OF PRISONERS BILL 1996—REFERENCE TO COMMITTEE**

Mr Williams (Attorney-General and Minister for Justice), pursuant to notice, moved—That:

- (1) the International Transfer of Prisoners Bill 1996 be referred to the Standing Committee on Legal and Constitutional Affairs for consideration and an advisory report to the House by 3 March 1997; and
- (2) the terms of this resolution, so far as they are inconsistent with standing and sessional orders, have effect notwithstanding anything contained in the standing and sessional orders.

Question—put and passed.

**4 FINANCIAL LAWS AMENDMENT BILL 1996**

Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister), pursuant to notice, presented a Bill for an Act to amend certain legislation administered by the Treasurer, and for related purposes.

Bill read a first time.

Mr Miles moved—That the Bill be now read a second time.

*Paper:* Mr Miles presented an explanatory memorandum to the Bill.

Debate adjourned (Mr L. D. T. Ferguson), and the resumption of the debate made an order of the day for the next sitting.

## 5 GENERAL INSURANCE SUPERVISORY LEVY AMENDMENT BILL 1996

Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister) presented a Bill for an Act to amend the *General Insurance Supervisory Levy Act 1989*, and for related purposes.

Bill read a first time.

Mr Miles moved—That the Bill be now read a second time.

*Paper:* Mr Miles presented an explanatory memorandum to the Bill.

Debate adjourned (Mr L. D. T. Ferguson), and the resumption of the debate made an order of the day for the next sitting.

## 6 WORKPLACE RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 1996—SENATE'S AMENDMENTS

The order of the day having been read for the consideration of the amendments made by the Senate, viz.:

### SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

- (1) Clause 2, page 2 (line 1), after “other than”, insert “Schedule 5,”.
- (2) Clause 2, page 2 (after line 8), after subclause (3), insert:
  - (3A) Schedule 5 commences on 1 January 1997.
- (3) Schedule 1, item 1, page 3 (line 13), after “flexible”, insert “and fair”.
- (4) Schedule 1, item 1, page 3 (line 28), omit “that there is”, substitute “the maintenance of”.
- (5) Schedule 1, item 1, page 3 (line 29), after “fair”, insert “and enforceable”.
- (6) Schedule 1, item 1, page 4 (line 9), after “members”, insert “, and are able to operate effectively”.
- (7) Schedule 1, item 1, page 4 (line 11), after “disputes”, insert “as far as possible”.
- (8) Schedule 1, item 1, page 4 (line 11), omit “as a last resort”, substitute “where appropriate”.
- (9) Schedule 1, item 1, page 4 (after line 21), at the end of section 3, add:
  - ; and (k) assisting in giving effect to Australia’s international obligations in relation to labour standards.
- (10) Schedule 2, item 2, page 5 (line 20), omit “give particular”, substitute “give”.
- (11) Schedule 3, item 2, page 8 (line 2), after “filing”, insert “and approval”.

- (12) Schedule 3, item 2, page 8 (after line 14), at the end of section 83BB, add:
- (2) In performing his or her functions, the Employment Advocate must have particular regard to:
    - (a) the needs of workers in a disadvantaged bargaining position (for example: women, people from a non-English speaking background, young people, apprentices, trainees and outworkers); and
    - (b) assisting workers to balance work and family responsibilities; and
    - (c) promoting better work and management practices through Australian workplace agreements.
- (13) Schedule 3, item 2, page 8 (line 19), after “Employment Advocate”, insert “(other than powers or functions relating to the approval of AWAs and ancillary documents)”.
- (14) Schedule 3, item 2, page 8 (after line 20), at the end of section 83BC, add:
- (3) A direction by the Minister is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (15) Schedule 3, item 2, page 9 (after line 2), after subsection (1), insert:
- (1A) The Employment Advocate’s functions under Part VID relating to the approval of AWAs and ancillary documents can only be delegated to a member of the staff referred to in section 83BD.
- (16) Schedule 3, item 2, page 16 (after line 17), at the end of Division 4, add:
- 83BT Publication of AWAs etc. by Employment Advocate**
- Subject to section 83BS, the Employment Advocate may publish or make available copies of, or extracts from, AWAs or ancillary documents.
- (17) Schedule 4, item 6, page 19 (lines 5 to 22), omit subsection (2), substitute:
- (2) In considering whether to make an order, the Commission must have regard to the wishes of the employees who are affected by the dispute, and, where the Commission considers it appropriate, is also to have regard to:
    - (a) the effect of any order on the operations (including operating costs, work practices, efficiency and productivity) of an employer who is a party to the dispute or who is a member of an organisation that is a party to the dispute; and
    - (b) any agreement or understanding of which the Commission becomes aware that deals with the right of an organisation of employees to represent under this Act the industrial interests of a particular class or group of employees; and

- (c) the consequences of not making an order for any employer, employees or organisation involved in the dispute; and
  - (d) any other order made by the Commission, in relation to another demarcation dispute involving the organisation to which the order under this section would relate, that the Commission considers to be relevant.
- (18) Schedule 5, items 1 to 5, page 23 (lines 5 to 26), omit the items, substitute:

**1 Subsection 4(1)**

Insert:

*allowable award matters* means the matters covered by subsection 89A(2).

**1A Subsection 4(1)**

Insert:

*exceptional matters order* means an order made by the Commission on a matter that is allowed to be included in an industrial dispute because of subsection 89A(6).

**2 Subsection 4(1) (definition of *paid rates award*)**

Repeal the definition.

**3 Subsection 4(1) (definition of *paid rates dispute*)**

Repeal the definition.

**4 Subsection 4(1) (definition of *paid rates functions and powers*)**

Repeal the definition.

**4A Subsection 4(1):**

Insert:

*regular part-time employee* means an employee who:

- (a) works less than full-time ordinary hours; and
- (b) has reasonably predictable hours of work; and
- (c) receives, on a pro-rata basis, equivalent pay and conditions to those specified in an award or awards for full-time employees who do the same kind of work.

**5 Subsection 4(1)**

Insert:

*State employment agreement* means an agreement:

- (a) between an employer and one or more of the following:
  - (i) an employee of the employer;
  - (ii) a trade union; and
- (b) that regulates wages and conditions of employment of one or more of the employees; and

- (c) that is made under a law of a State that provides for such agreements; and
  - (d) that prevails over an inconsistent State award.
- (19) Schedule 5, item 6, page 24 (lines 3 to 9), omit paragraphs (a) to (c), substitute:
- (a) wages and conditions of employment are protected by a system of enforceable awards established and maintained by the Commission; and
  - (b) awards act as a safety net of fair minimum wages and conditions of employment; and
  - (c) awards are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises; and
- (20) Schedule 5, item 7, page 24 (line 21) to page 25 (line 11), omit subsection (2), substitute:
- (2) 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.
  - (3) 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;
    - (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.

- (21) Schedule 5, item 9, page 25 (line 17) to page 26 (line 34), omit section 89A and the note to subsection (6), substitute:

**89A Scope of industrial disputes**

*Industrial dispute normally limited to allowable award matters*

- (1) For the following purposes, an industrial dispute is taken to include only matters covered by subsections (2) and (3):
- (a) dealing with an industrial dispute by arbitration;
  - (b) preventing or settling an industrial dispute by making an award or order;
  - (c) maintaining the settlement of an industrial dispute by varying an award or order.

*Allowable award matters*

- (2) For the purposes of subsection (1) the matters are as follows:
- (a) classifications of employees and skill-based career paths;
  - (b) ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
  - (c) rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage system;
  - (d) piece rates, tallies and bonuses;
  - (e) annual leave and leave loadings;
  - (f) long service leave;
  - (g) personal/carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave;
  - (h) parental leave, including maternity and adoption leave;
  - (i) public holidays;
  - (j) allowances;
  - (k) loadings for working overtime or for casual or shift work;
  - (l) penalty rates;
  - (m) redundancy pay;
  - (n) notice of termination;
  - (o) stand-down provisions;
  - (p) dispute settling procedures;
  - (q) jury service;
  - (r) type of employment, such as full-time employment, casual employment, regular part-time employment and shift work;
  - (s) superannuation;

- (t) pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and 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.
- (3) The Commission's power to make an award dealing with matters covered by subsection (2) is limited to making a minimum rates award.

*Limitations on Commission's powers*

- (4) The Commission's power to make or vary an award in relation to matters covered by paragraph (2)(r) does not include:
  - (a) the power to limit the number or proportion of employees that an employer may employ in a particular type of employment; or
  - (b) the power to set maximum or minimum hours of work for regular part-time employees.
- (4A) Paragraph (4)(b) does not prevent the Commission from including in an award:
  - (a) provisions setting a minimum number of consecutive hours that an employer may require a regular part-time employee to work; or
  - (b) provisions facilitating a regular pattern in the hours worked by regular part-time employees.
- (5) The Commission may include in an award provisions that are incidental to the matters in subsection (2) and necessary for the effective operation of the award.

*Exceptional matters may be included in industrial dispute*

- (6) Subsection (1) does not exclude a matter (the *exceptional matter*) from an industrial dispute if the Commission is satisfied of all the following:
  - (a) a party to the dispute has made a genuine attempt to reach agreement on the exceptional matter;
  - (b) there is no reasonable prospect of agreement being reached on the exceptional matter by conciliation, or further conciliation, by the Commission;
  - (c) it is appropriate to settle the exceptional matter by arbitration;
  - (d) the issues involved in the exceptional matter are exceptional issues;
  - (e) a harsh or unjust outcome would apply if the industrial dispute were not to include the exceptional matter.

*Anti-discrimination clause*

- (7) Nothing in this section prevents the Commission from including a model anti-discrimination clause in an award.

Note: A model anti-discrimination clause was established by the Commission in the Full Bench decision dated 9 October 1995 (print M5600).

*Interpretation*

- (8) In this section, *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.
- (22) Schedule 5, page 27 (after line 16), after item 13, insert:

**13A After section 98**

Insert in Division 1:

**98A Commission to avoid technicalities and facilitate fair conduct of proceedings**

The Commission must perform its functions in a way that avoids unnecessary technicalities and facilitates the fair and practical conduct of any proceedings under this Act.

- (23) Schedule 5, item 19, page 28 (lines 29 to 31), omit the item, substitute:

**19 Subsections 111(1A), (1B) and (1C)**

Repeal the subsections.

**19A Subsection 111(1D)**

Repeal the subsection, substitute:

- (1D) The Commission must decide as quickly as it can whether to make an interim award if the Commission considers that such an award may be necessary to protect, for an interim period, the wages and conditions of employment of the employees whom the award would cover.

**19B Subsections 111(1F), (1G), (1H) and (4)**

Repeal the subsections.

- (24) Schedule 5, item 20, page 29 (lines 3 to 24), omit section 111AAA, substitute:

**111AAA Commission to cease dealing with industrial dispute in certain circumstances**

- (1) If the Commission is satisfied that a State award or State employment agreement governs the wages and conditions of employment of particular employees whose wages and conditions of employment are the subject of an industrial dispute, the Commission must cease dealing with the industrial dispute in relation to those employees, unless the Commission is satisfied that ceasing would not be in the public interest.



- (2) In determining the public interest for the purposes of subsection (1), the Commission must give primary consideration to:
  - (a) the views of the employees referred to in subsection (1); and
  - (b) the views of the employer or employers of those employees.
- (3) The Commission must inform itself as quickly as it can about the views referred to in subsection (2), and may inform itself in such manner as it thinks fit.
- (4) In this section:
 

***cease dealing***, in relation to an industrial dispute, means:

  - (a) to dismiss the whole or a part of a matter to which the industrial dispute relates; or
  - (b) to refrain from further hearing or from determining the industrial dispute or part of the industrial dispute.

(25) Schedule 5, page 30 (after line 21), after item 26, insert:

**26A After section 120:**

Insert:

**120A Orders of Commission on exceptional matters**

- (1) Each exceptional matters order must relate only to a single matter.
 

Note 1: An exceptional matters order is an order made by the Commission on a matter that is allowed to be included in an industrial dispute because of subsection 89A(6).

Note 2: Exceptional matters orders are published under section 143, in the same way as other orders of the Commission.
- (2) The Commission must not make an exceptional matters order unless the Commission is satisfied that making the order is in the public interest, and consistent with the objects of this Act.
- (3) The Commission must not make an exceptional matters order that would apply to more than a single business unless the Commission is satisfied that such an order is an appropriate manner of settling the matter in dispute.
- (4) An exceptional matters order must be made by a Full Bench, unless the order relates to a single business (within the meaning of Part VIB).
- (5) An exceptional matters order ceases to be in force 2 years after it is made, and cannot be extended.

**120B Commission to report on junior rates of pay**

- (1) Before 22 June 1999, a Full Bench must prepare a report for the Minister on the feasibility of replacing junior rates with non-discriminatory alternatives.
- (2) The report must include assessments of:

- (a) whether it is desirable to replace junior rates with non-discriminatory alternatives; and
- (b) the consequences for youth employment of abolishing junior rates; and
- (c) the utility of junior rates:
  - (i) for different types of employment; and
  - (ii) for different industries; and
  - (iii) in the school-to-work transition.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable after the Minister receives it.
- (4) In this section, *junior rates* means junior rates of pay.
- (26) Schedule 5, item 27, page 31 (after line 6), at the end of section 127AA, add:
  - (2) This section does not apply to an order made under section 285G.
- (27) Schedule 5, item 29, page 31 (lines 16 to 22), omit subsection (1B), substitute:
  - (1B) The Commission must, if it considers it appropriate, ensure that a decision or determination covered by subsection (1):
    - (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and
    - (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and
    - (c) does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.
- (28) Schedule 5, item 29, page 31 (after line 28), after paragraph (1C)(a), insert:
  - (aa) where appropriate, contains provisions enabling the employment of regular part-time employees; and
- (29) Schedule 5, item 29, page 32 (after line 19), after subsection (1D), insert:
  - (1E) Paragraph (1D)(a) does not apply to a decision or determination made by the Commission more than 3 years after 22 June 1997, except where the Commission decides, on a case-by-case basis, that the paragraph should apply. Decisions by the Commission as to whether the paragraph should apply must be made by the Commission in accordance with principles established by a Full Bench.
- (30) Schedule 5, item 35, page 33 (after line 25), after subsection (3), insert:

- (4) In subsection (3), **award** does not include an award made under subsection 170MX(3).
- (5) Subsections (2) and (3) do not apply to a State employment agreement unless the agreement is one that was approved by a State industrial authority under a State Act that required the authority, before approving the agreement, to be satisfied:
  - (a) that the employees covered by the agreement are not disadvantaged in comparison to their entitlements under the relevant award; and
  - (b) that the agreement was genuinely made, or that the agreement was not made under duress or that the agreement was made without coercion; and
  - (c) that the agreement covers all the employees whom it would be reasonable for the agreement to cover, having regard to matters (if any) specified in the State Act (such as the nature of the work performed under the agreement and the relationship between the employees in the part of the business covered by the agreement and the remainder of the employees in the business).
- (31) Schedule 5, item 36, page 33 (line 26) to page 34 (line 2), omit the item.
- (32) Schedule 5, Part 2, page 35 (line 2) to page 39 (line 13), omit the Part, substitute:

## Part 2—Transitional provisions

### 41 Interpretation

In this Part:

**interim period** means the period of 18 months beginning on the day on which section 89A of the Principal Act commences.

**Principal Act** means the Workplace Relations Act.

**special consent provisions** has the meaning given by item 42A.

**termination time**, in relation to special consent provisions, means the end of the period that is specified in the award under section 147 of the Principal Act.

### 42 Exercise of Commission's powers under this Part

In exercising its powers under this Part, the Commission is to have regard to the desirability of assisting parties to awards to agree on appropriate variations to their awards, rather than have parts of awards cease to have effect under item 44 at the end of the interim period.

#### 42A Special consent provisions

For the purposes of this Part, *special consent provisions* are provisions of an award that give effect to a decision of the Commission that is expressed to be made in accordance with one or more of the following principles:

- (a) the Enterprise Bargaining Principle adopted by the Commission in the National Wage Case decision of October 1991 (Dec 1150/91, Print K0300);
- (b) the Enterprise Awards Principle adopted by the Commission in its Review of the Wage Fixing Principles decision of October 1993 (Dec 1300/93, Print K9700);
- (c) Principle 2.2 (Consent Award or Award Variation to Give Effect to an Enterprise Agreement), adopted by the Commission in its Review of the Wage Fixing Principles decision of August 1994 (Dec 1408/94, Print L4700) and incorporated without amendment in wages principles established by the Commission in its Safety Net Adjustment & Section 150A Review decision of October 1995 (Dec 2120/95, Print M5600).

#### 43 Variation of awards during the interim period

- (1) If one or more of the parties to an award apply to the Commission for a variation of the award under this item, the Commission may, during the interim period, vary the award so that it only deals with allowable award matters.
  - (1A) For the purposes of this item, an exceptional matters order is taken to relate wholly to allowable award matters.
  - (1B) Special consent provisions cannot be varied under this item before the termination time for those provisions.
- (2) The Commission may only deal with the application by arbitration if it is satisfied that the applicant or applicants have made reasonable attempts to reach agreement with the other parties to the award about how the award should be varied and the treatment of matters that are not allowable award matters.
- (3) If:
  - (a) the award provides for rates of pay that, in the opinion of the Commission:
    - (i) are not operating as minimum rates; or
    - (ii) were made on the basis that they were not intended to operate as minimum rates; and
  - (b) the application under this item seeks to have such rates of pay varied so that they are expressed as minimum rates of pay;

the Commission may vary the award so that it provides for minimum rates of pay consistent with sections 88A and 88B of the Principal Act and the limitation on the Commission's power in subsection 89A(3) of that Act.

- (4) If the Commission varies the award under subitem (3), it must include in the award provisions that ensure that overall entitlements to pay provided by the award are not reduced by that variation, unless the Commission considers that it would be in the public interest not to include such provisions.
- (5) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:
  - (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
  - (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
  - (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.
- (6) The Commission must also review the award to determine whether or not it meets the following criteria:
  - (a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
  - (aa) where appropriate, it contains provisions enabling the employment of regular part-time employees;
  - (b) it is expressed in plain English and is easy to understand in both structure and content;
  - (c) it does not contain provisions that are obsolete or that need updating;
  - (d) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
  - (e) it does not contain provisions that discriminate against an employee 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.
- (7) If the Commission determines that the award does not meet the criteria set out in subitem (5) or (6), the Commission may take

whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria.

**44 Parts of awards cease to have effect at the end of the interim period**

- (1) At the end of the interim period, each award ceases to have effect to the extent that it provides for matters other than allowable award matters.
- (2) For the purposes of this item, an exceptional matters order is taken to relate wholly to allowable award matters.
- (3) For the purposes of this item, an award that is made under subsection 170MX(3) of the Principal Act is taken to provide wholly for allowable award matters.
- (4) If the termination time for special consent provisions is after the end of the interim period, then this item and item 45 apply to the special consent provisions as if a reference to the end of the interim period were instead a reference to the termination time.

**45 Variation of awards after the end of the interim period**

- (1) As soon as practicable after the end of the interim period, the Commission must review each award:
  - (a) that is in force; and
  - (b) that the Commission is satisfied has been affected by item 44.
- (2) The Commission must vary the award to remove provisions that ceased to have effect under item 44.
- (3) When varying the award under subitem (2), the Commission may also vary the award so that, in relation to an allowable award matter, the award is expressed in a way that reasonably represents the entitlements of employees in respect of that matter as provided in the award as in force immediately before the end of the interim period.
- (4) If, immediately before the end of the interim period, the award provided for rates of pay that, in the opinion of the Commission:
  - (a) were not operating as minimum rates of pay; or
  - (b) were made on the basis that they were not intended to operate as minimum rates;

the Commission may vary the award so that it provides for minimum rates of pay consistent with sections 88A and 88B of the Principal Act and the limitation on the Commission's power in subsection 89A(3) of that Act.

- (5) If the Commission varies the award under subitem (4), it must include in the award provisions that ensure that overall entitlements to pay provided by the award are not reduced by that variation,

unless the Commission considers that it would be in the public interest not to include such provisions.

- (6) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:
  - (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
  - (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
  - (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.
- (7) The Commission must also review the award to determine whether or not it meets the following criteria:
  - (a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
  - (aa) where appropriate, it contains provisions enabling the employment of regular part-time employees;
  - (b) it is expressed in plain English and is easy to understand in both structure and content;
  - (c) it does not contain provisions that are obsolete or that need updating;
  - (d) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
  - (e) it does not contain provisions that discriminate against an employee 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.
- (8) If the Commission determines that the award does not meet the criteria set out in subitem (6) or (7), the Commission may take whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria.

#### **45A Corporations not bound by State awards**

- (1) If:
  - (a) a constitutional corporation is bound by an award in respect of an employee; and

- (b) the award is varied under subitem 43(1) or wholly or partly ceases to have effect because of item 44; and
- (c) as a result of the award being varied, or ceasing to have effect, as mentioned in paragraph (b), the corporation would (apart from this item) become bound by a State award in respect of the employee;

then the corporation is not bound by the State award in relation to the employee unless it becomes bound as a result of an application by the corporation to the relevant State industrial authority.

- (2) Subitem (1) does not operate so that a State award, or part of a State award, prevails over an award of the Commission.

#### **46 Matters to be dealt with by Full Bench**

- (1) After the commencement of this Part, a Full Bench may establish principles about varying awards under this Part.
- (2) After such principles (if any) have been established, the power of the Commission to vary an award under this Part is exercisable only by a Full Bench unless the contents of the award:
  - (a) give effect to determinations of a Full Bench under this Part; or
  - (b) are consistent with principles established by a Full Bench under this item.

#### **47 Certain provisions not discriminatory**

- (1) A provision of an award does not discriminate against an employee for the purposes of paragraph 43(6)(e) or 45(7)(e) merely because:
  - (a) it provides for a junior rate of pay; or
  - (b) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
  - (c) 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.
- (2) Paragraph (1)(a) does not apply to a decision or determination made by the Commission under this Part more than 3 years after 22 June 1997, except where the Commission decides, on a case-by-case basis, that the paragraph should apply. Decisions by the Commission as to whether the paragraph should apply must be made by the Commission in accordance with principles established by a Full Bench.



**48 Transitional—repeal of subsection 111(1A)**

The repeal of subsection 111(1A) of the Principal Act does not apply to any proceedings before the Commission that commenced before the commencement of the repeal.

- (33) Schedule 6, Part 1, page 40 (lines 4 to 12), omit the heading and items 1 to 4.
- (34) Schedule 6, Part 2, page 41 (lines 2 to 17), omit the Part.
- (35) Schedule 7, item 1, page 42 (line 8), omit “with or without any modifications”, substitute “subject to any necessary modifications”.
- (36) Schedule 7, item 1, page 42 (line 19), omit “with or without modifications”, substitute “subject to any necessary modifications”.
- (37) Schedule 7, item 1, page 42 (line 32) to page 43 (line 9), omit subsection (10).
- (38) Schedule 7, item 5, page 44 (lines 4 to 14), omit paragraphs (a) to (c), substitute:
  - (a) to establish procedures for conciliation in relation to certain matters relating to the termination or proposed termination of an employee’s employment in certain circumstances; and
  - (b) to provide, if the conciliation process is unsuccessful, for recourse to arbitration or to a court depending on the grounds on which the conciliation was sought; and
  - (c) to provide for remedies appropriate to a case where, on arbitration, a termination is found to be harsh, unjust or unreasonable; and
  - (ca) to provide for sanctions where, on recourse to a court, a termination or proposed termination is found to be unlawful; and
- (39) Schedule 7, item 5, page 44 (lines 27 to 31), omit subsection (1), substitute:
  - (1) Subdivision B applies, in so far as it relates to an application to the Commission for relief in relation to the termination of employment of an employee on the ground that that termination was harsh, unjust or unreasonable, if the employee concerned was, before the termination:
    - (a) a Commonwealth public sector employee; or
    - (b) a Territory employee; or
    - (c) a Federal award employee who was employed by a constitutional corporation; or
    - (d) a Federal award employee who was a waterside worker, maritime employee or flight crew officer, employed in the course of, or in relation to, trade or commerce between Australia and a place outside Australia, between the States,

within a Territory, between a State and a Territory, or between 2 Territories.

- (1A) Subdivision B applies, in so far as it relates to an application to the Commission for relief in relation to the termination of employment of an employee on the ground of a contravention of all or any of sections 170CK, 170CL, 170CM and 170CN, if the employee concerned is an employee in relation to whose termination of employment Subdivision C applies in accordance with this section.
- (40) Schedule 7, item 5, page 45 (lines 1 to 18), omit subsections (3) and (4) and the note to subsection (4).
- (41) Schedule 7, item 5, page 48 (line 1), omit “**Harsh, unjust or unreasonable**”, substitute “**Application to Commission for relief in respect of**”.
- (42) Schedule 7, item 5, page 48 (lines 5 to 12), omit subsection (1), substitute:
- (1) Subject to subsection (1D), an employee whose employment has been terminated by the employer may apply to the Commission for relief in respect of the termination of that employment:
    - (a) on the ground that the termination was harsh, unjust or unreasonable; or
    - (b) on the ground of an alleged contravention of section 170CK, 170CL, 170CM or 170CN; or
    - (c) on any combination of grounds in paragraph (b) or on a ground or grounds in paragraph (b) and the ground in paragraph (a).
  - (1A) Subject to subsection (1E), an employee whose employment is proposed to be terminated by the employer may apply to the Commission for relief on the ground of an alleged contravention of section 170CL.
  - (1B) Subject to subsection (1E), if:
    - (a) an employee’s employment has been terminated by the employer; and
    - (b) a trade union’s rules entitle it to represent the industrial interests of the employee;

the union may, on behalf of the employee, apply to the Commission for relief on the ground or grounds of an alleged contravention of one or more of sections 170CK, 170CM and 170CN.
  - (1C) Subject to subsection (1E), if an employee’s employment has been terminated, or is proposed to be terminated, by the employer:
    - (a) an inspector; or
    - (b) a trade union:
      - (i) whose members include the employee; and

- (ii) whose rules entitle it to represent the industrial interests of the employee; or
  - (c) an officer or employee of such a union—if the union's rules authorise the officer or employee to act on the union's behalf; may apply to the Commission for relief on the ground of an alleged contravention of section 170CL.
- (1D) An application under subsection (1) may not be made:
- (a) on the ground referred to in paragraph (1)(a) or on grounds that include that ground—unless, under subsection 170CB(1), Subdivision B applies to that application; or
  - (b) on a ground referred to in paragraph (1)(b)—unless Subdivision C applies to that application.
- (1E) An application under subsection (1A), (1B) or (1C) may not be made on a ground referred to in that subsection unless Subdivision C applies to that application.
- (43) Schedule 7, item 5, page 48 (after line 25), at the end of section 170CF, add:
- (2) If the Commission is satisfied that all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful so far as concerns at least one ground of the application, the Commission:
    - (a) must issue a certificate in writing stating that it is so satisfied in respect of that ground or each such ground; and
    - (b) must indicate to the parties the Commission's assessment of the merits of the application in so far as it relates to that ground or to each such ground; and
    - (c) if the Commission thinks fit, may recommend that the applicant elect not to pursue a ground or grounds of the application (whether or not also recommending other means of resolving the matter).
- (44) Schedule 7, item 5, page 48 (before line 26), before section 170CG, insert:

**170CFA Elections to proceed to arbitration or to begin court proceedings**

- (1) If the certificate given by the Commission under subsection 170CF(2) identifies only the ground referred to in paragraph 170CE(1)(a) as a ground where conciliation is, or is likely to be, unsuccessful, the applicant must elect either to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable or not to proceed.
- (2) If the certificate given by the Commission under subsection 170CF(2) identifies only:
  - (a) the ground referred to in paragraph 170CE(1)(a); and
  - (b) the ground of an alleged contravention of section 170CM;

as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either, both, or neither of the following:

- (c) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;
- (d) to begin proceedings in a court of competent jurisdiction for an order under section 170CR in respect of the alleged contravention of section 170CM.

(3) If the certificate given by the Commission under subsection 170CF(2) identifies:

- (a) the ground referred to in paragraph 170CE(1)(a); and
- (b) a ground or grounds of an alleged contravention of one or more of sections 170CK, 170CL and 170CN;

as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either or neither of the following:

- (c) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;
- (d) to begin proceedings in the Court for an order under section 170CR in respect of the alleged contravention, or of any one or more of the alleged contraventions.

(4) If the certificate given by the Commission under subsection 170CF(2) identifies only a ground or grounds of an alleged contravention of one or more of sections 170CK, 170CL, 170CM and 170CN as the ground or grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either, both or neither of the following:

- (a) so far as concerns an alleged contravention of a section or sections other than section 170CM—to begin proceedings in the Court for an order under section 170CR in respect of the alleged contravention, or of any one or more of the alleged contraventions;
- (b) so far as concerns an alleged contravention of section 170CM—to begin proceedings in a court of competent jurisdiction for an order under section 170CR in respect of the alleged contravention.

(5) If the certificate given by the Commission under subsection 170CF(2) identifies:

- (a) the ground referred to in paragraph 170CE(1)(a); and
- (b) the ground of an alleged contravention of section 170CM; and
- (c) a ground or grounds of an alleged contravention of one or more of sections 170CK, 170CL and 170CN;

as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect:

- (d) to do either or both of the things permitted in subsection (2);  
or
  - (e) to do either or both of the things permitted in subsection (4);  
or
  - (f) to do none of those things.
- (6) An election under subsection (1), (2), (3), (4) or (5) must:
- (a) be made in writing; and
  - (b) be lodged with the Commission not later than 7 days after the day of issue of the certificate by the Commission under subsection 170CF(2) in relation to the application.
- (7) If an applicant fails to lodge with the Commission an election under subsection (1), (2), (3), (4) or (5) within the period required under subsection (6), the application concerned is taken to have been discontinued by the applicant at the end of that period for all purposes other than the making of an election out of time in accordance with subsection (8).
- (8) The Commission may accept an election that is lodged out of time if the Commission considers that it would be unfair not to do so, and, if the Commission accepts such an election, the original application is taken not to have been discontinued in spite of subsection (7).
- (45) Schedule 7, item 5, page 48 (line 27) to page 49 (line 11), omit subsections (1) and (2), substitute:
- (1) If:
    - (a) the Commission has issued a certificate under subsection 170CF(2) regarding conciliation of an application relating to a termination of employment; and
    - (b) the applicant has made an election under subsection 170CFA(1), (2), (3) or (5) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;the Commission may so proceed to arbitrate the matter.
  - (2) Neither the making of an election under subsection 170CFA(1), (2), (3) or (5) to proceed to arbitration nor the commencement of that arbitration prevents further conciliation of the matter being attempted, or the parties from settling the matter, at any time before an order is made under section 170CH.
- (46) Schedule 7, item 5, page 49 (line 33) to page 50 (line 2), omit subsection (2), substitute:

- (2) The Commission must not make an order under subsection (1) unless the Commission is satisfied, having regard to all the circumstances of the case including:
- (a) the effect of the order on the viability of the employer's undertaking, establishment or service; and
  - (b) the length of the employee's service with the employer; and
  - (c) the remuneration that the employee would have received, or would have been likely to receive, if the employee's employment had not been terminated; and
  - (d) the efforts of the employee (if any) to mitigate the loss suffered by the employee as a result of the termination; and
  - (e) any other matter that the Commission considers relevant; that the remedy ordered is appropriate.
- (47) Schedule 7, item 5, page 50 (line 31), after "have regard to", insert "all the circumstances of the case including".
- (48) Schedule 7, item 5, page 50 (after line 33), insert:
- (aa) the length of the employee's service with the employer; and
- (49) Schedule 7, item 5, page 51 (line 27), omit "\$30,000", substitute "\$32,000".
- (50) Schedule 7, item 5, page 52 (line 6), omit "an employee", substitute "a person or organisation".
- (51) Schedule 7, item 5, page 52 (line 9), omit "employee", substitute "person or organisation".
- (52) Schedule 7, item 5, page 52 (line 15), omit "concerned", substitute "before the Commission".
- (53) Schedule 7, item 5, page 52 (lines 21 to 28), omit subsection (3), substitute:
- (3) If:
    - (a) a person or organisation has made an application under section 170CE; and
    - (b) the person or organisation elects, under subsection 170CFA(1), (2), (3) or (5) to proceed to arbitration; and
    - (c) after the making of that election the person or organisation discontinues the matter before the Commission;
 the Commission may, on an application made under this section by the employer, make an order for costs against the person or organisation if the Commission is satisfied that the person or organisation has acted unreasonably in failing to discontinue the application at an earlier time.
- (54) Schedule 7, item 5, page 52 (line 31), after "the proceedings", insert "before the Commission".

- (55) Schedule 7, item 5, page 52 (line 32) to page 53 (line 2), omit subsection (5), substitute:
- (5) A schedule of costs may be prescribed in relation to items of expenditure likely to be incurred in respect of an application to the Commission under section 170CE.
  - (6) Without limiting, by implication, the generality of the items of expenditure for which the schedule may provide, those items may include:
    - (a) legal and professional costs and disbursements; and
    - (b) expenses arising from the representation of a party by a person or organisation other than on a legal professional basis; and
    - (c) expenses of witnesses.
  - (7) If a schedule of costs is prescribed for the purposes of subsection (5), then, in awarding costs under this section, the Commission:
    - (a) is not limited to the items of expenditure appearing in the schedule; but
    - (b) if an item does appear in the schedule—must not award costs in respect of that item at a rate or of an amount in excess of the rate or amount appearing in the schedule.
- (56) Schedule 7, item 5, page 57 (line 3), omit “An employee”, substitute “Subject to subsection (5), an employee”.
- (57) Schedule 7, item 5, page 57 (line 5), omit “section 170CK, 170CL or 170CN”, substitute “one or more of sections 170CK, 170CL and 170CN”.
- (58) Schedule 7, item 5, page 57 (line 6), omit “An employee”, substitute “Subject to subsection (5), an employee”.
- (59) Schedule 7, item 5, page 57 (lines 10 to 28), omit subsections (3) to (5), substitute:
- (3) Subject to subsection (5), a trade union that has made an application under section 170CE on behalf of an employee on the ground of an alleged contravention of one or more of sections 170CK, 170CM and 170CN may apply to a court under this section for an order under section 170CR in respect of that alleged contravention or each of those alleged contraventions.
  - (4) Subject to subsection (5), an inspector, a trade union, or a trade union officer or employee who has made an application under section 170CE in respect of an alleged contravention of section 170CL may apply to the Court under this section for an order under section 170CR in respect of that alleged contravention.
  - (5) An application under subsection (1), (2), (3) or (4) in respect of an alleged contravention of section 170CK, 170CL, 170CM or 170CN may not be made to a court unless the applicant:

- (a) has received a certificate under subsection 170CF(2) regarding conciliation of an application made wholly or partly on the ground of the alleged contravention; and
- (b) has elected under section 170CFA to begin proceedings in that court for an order under section 170CR in respect of the alleged contravention.

(5A) The application must be made within 14 days after the lodgment of an election under subsection 170CFA(6).

- (60) Schedule 7, item 10, page 61 (lines 10 to 12), omit “by an employee under section 170CE for the termination of employment of that employee to be dealt with under Subdivision B if proceedings”, substitute “under section 170CE in relation to the termination of employment of an employee on the ground that the termination was harsh, unjust or unreasonable, or on grounds that include that ground, if proceedings (the *prior proceedings*)”.

Note about Schedule 7, item 10: The heading to section 170HB (page 61, line 9) is replaced by the heading “**Applications alleging harsh, unjust or unreasonable termination**”.

- (61) Schedule 7, item 10, page 61 (lines 23 to 26), omit subsection (2), substitute:

(2) Subsection (1) does not prevent an application of the kind referred to in that subsection if the prior proceedings:

- (a) have been discontinued by the party who began the proceedings; or
- (b) have failed for want of jurisdiction.

- (62) Schedule 7, item 10, page 62 (lines 8 to 17), omit subsection (4), substitute:

(4) If an application of the kind referred to in subsection (1) has been made in respect of a termination, a person is not entitled to take proceedings for any other remedy that, if it had been applied for before the application would, because of the operation of subsection (1), have prevented the application unless the application:

- (a) is discontinued by the applicant; or
- (b) fails for want of jurisdiction.

- (63) Schedule 7, item 10, page 62 (lines 19 to 22), omit “to the Court under section 170CP in respect of a termination of an employee’s employment that is alleged to contravene section 170CK because it was done for a reason set out in subsection 170CK(2) if proceedings”, substitute “under section 170CE on the ground that the termination of an employee’s employment constitutes an alleged contravention of section 170CK because it was done for a reason set out in subsection 170CK(2) if proceedings (the *prior proceedings*)”.



Note about Schedule 7, item 10: The heading to section 170HC (page 62, line 18) is replaced by the heading “**Applications alleging contravention of section 170CK**”.

(64) Schedule 7, item 10, page 62 (lines 30 to 33), omit subsection (2), substitute:

(2) Subsection (1) does not prevent an application of the kind referred to in that subsection if the prior proceedings:

- (a) have been discontinued by the party who began the proceedings; or
- (b) have failed for want of jurisdiction.

(65) Schedule 7, item 10, page 63 (lines 1 to 11), omit subsection (3), substitute:

(3) If an application of the kind referred to in subsection (1) has been made in respect of a termination, a person is not entitled to take proceedings for any other remedy that, if it had been applied for before that application would, because of the operation of subsection (1), have prevented that application unless the application:

- (a) is discontinued by the applicant; or
- (b) fails for want of jurisdiction.

(66) Schedule 7, items 11 and 12, page 63 (lines 12 to 15), omit the items.

(67) Schedule 7, item 13, page 63 (lines 16 to 24), omit the item, substitute:

**13 Subsection 170JC(3)**

Repeal the subsection, substitute:

(3) In addition to any other right that an employee covered by an order under this Part may have under Part VIII (as it applies in accordance with this section):

- (a) the employee may apply to the Court to enforce the order by injunction or otherwise as the Court thinks fit; and
- (b) if the order is an order under Subdivision B of Division 3—the employee may apply to a court of competent jurisdiction as defined in section 177A to enforce the order by injunction.

(68) Schedule 7, page 63 (after line 26), after item 14, insert:

**14A At the end of section 170JF**

Add:

(2) For the avoidance of doubt, an appeal to a Full Bench under section 45 in relation to an order made by the Commission under Subdivision B of Division 3 may be made only on the grounds that the Commission was in error in deciding to make the order.

(69) Schedule 8, items 1 and 2, page 66 (lines 7 to 12), omit the items, substitute:

**1 Subsection 4(1) (paragraph (d) of the definition of *Anti-Discrimination Conventions*)**

Omit “(a copy of the English text of the Preamble, and Parts II and III, of the Covenant is set out in Schedule 8)”.

**2 Subsection 4(1) (definition of *Equal Remuneration Convention*)**

Omit “, a copy of the English text of which is set out in Schedule 6”.

(70) Schedule 8, page 66 (after line 16), after item 4, insert:

**4A Paragraph 170BA(b)**

Omit “, and a copy of the English text of which is set out in Schedule 7”.

**4B Paragraph 170BA(c)**

Omit “, and a copy of the English text of which is set out in Schedule 9”.

(71) Schedule 8, item 5, page 66 (lines 17 and 18), omit the item, substitute:

**5 Section 170BH**

Omit “This Division”, substitute “Subject to section 170BHA, this Division”.

**5A After section 170BH**

Insert:

**170BHA Applications under this Division**

- (1) An application must not be made under this Division for an order to secure equal remuneration for work of equal value for an employee if proceedings for an alternative remedy:
  - (a) to secure such remuneration for the employee; or
  - (b) against unequal remuneration for work of equal value for the employee;
 have begun:
  - (c) under another provision of this Act; or
  - (d) under another law of the Commonwealth; or
  - (e) under a law of a State or Territory.
- (2) Subsection (1) does not prevent an application under this Division if the proceedings for the alternative remedy:
  - (a) have been discontinued by the party who initiated the proceedings; or
  - (b) have failed for want of jurisdiction.
- (3) If an application under this Division has been made for an order to secure equal remuneration for work of equal value for an employee, a person is not entitled to take proceedings for an alternative remedy under a provision or law of a kind referred to in subsection (1):
  - (a) to secure such remuneration for the employee; or
  - (b) against unequal remuneration for work of equal value for the employee.

(4) Subsection (3) does not prevent the taking of proceedings for an alternative remedy if the proceedings under this Division:

- (a) have been discontinued by the party who initiated the proceedings; or
- (b) have failed for want of jurisdiction.

(72) Schedule 8, item 10, page 67 (lines 7 to 11), omit the item, substitute:

**10 Application of section 170BHA**

(1) Subsections 170BHA(1) and (2) of the Workplace Relations Act have effect in relation to the prevention of an application being made under Division 2 of Part VIA of that Act on or after the commencement of this Schedule, whether or not the proceedings for an alternative remedy referred to in subsection 170BHA(1) began before that commencement.

(2) Subsections 170BHA(3) and (4) of the Workplace Relations Act have effect in relation to the prevention of the taking of proceedings for an alternative remedy referred to in subsection 170BHA(3) on or after the commencement of this Schedule, whether or not the application under Division 2 of Part VIA referred to in that subsection was made before that commencement.

(73) Schedule 9, item 5, page 69 (lines 19 to 23), omit subsection (2), substitute:

(2) If the matter before the Commission is an application under Division 2 or 3 of Part VIB for certification of an agreement, the Commission:

- (a) must, on application, grant leave to intervene in the matter to any organisation of employees that was requested to represent a person as mentioned in subsection 170LK(4) in relation to the agreement, provided the request was not withdrawn; and
- (b) except as mentioned in paragraph (a), must not grant leave to intervene in the matter to an organisation of employees other than one that is proposed to be bound by the agreement.

(74) Schedule 9, item 13, page 70 (line 13), omit “or terminated the agreement,”, substitute “the agreement”.

(75) Schedule 9, item 13, page 70 (lines 22 and 23), omit “or terminate the agreement,”, substitute “the agreement”.

(76) Schedule 9, item 13, page 70 (line 25), omit “or terminating the agreement,”, substitute “the agreement”.

(77) Schedule 9, item 14, page 71 (after line 17), after subsection (8A), insert:

(8B) If:

- (a) the Commission has made an order for a secret ballot under subsection 135(2B); and

- (b) before the vote is taken, the Commission forms the view that the secret ballot should not be proceeded with because it has satisfied itself that:
  - (i) the matters giving rise to the industrial action have been, or are about to be, settled; or
  - (ii) the industrial action has stopped or been prevented, or is about to stop or be prevented;
 the Commission must revoke the order.
- (78) Schedule 9, item 19, page 74 (lines 11 to 16), omit subsection (4), substitute:
  - (4) A Full Bench, under that Division, must not certify a multiple-business agreement unless it is satisfied that it is in the public interest to certify the agreement, having regard to:
    - (a) whether the matters dealt with by the agreement could be more appropriately dealt with by an agreement, other than a multiple-business agreement, under this Part; and
    - (b) any other matter that the Full Bench considers relevant.
- (79) Schedule 9, item 19, page 75 (line 6), omit paragraph (b).
- (80) Schedule 9, item 19, page 75 (line 15), omit “or terminate the agreement,”, substitute “the agreement”.
- (81) Schedule 9, item 19, page 75 (lines 21 and 22), omit “or terminate the agreement,”, substitute “the agreement”.
- (82) Schedule 9, item 19, page 75 (lines 27 to 29), omit section 170LG, substitute:

#### **170LG Paid rates award**

A *paid rates award* is an award or a State award that:

- (a) includes a statement to the effect that it is a paid rates award; or
  - (b) has been regarded by the Commission, or a State industrial authority, as the case may be, as a paid rates award when applying principles for the purposes of determining wages and conditions of employment.
- (83) Schedule 9, item 19, page 77 (lines 1 to 3), omit subsection 170LJ(3), substitute:
    - (3) The employer must take reasonable steps to ensure that:
      - (a) at least 14 days before any approval is given, all the persons either have, or have ready access to, the agreement, in writing; and
      - (b) before any approval is given, the terms of the agreement are explained to all the persons.

- (84) Schedule 9, item 19, page 77 (line 13), omit “5 working”, substitute “14”.
- (85) Schedule 9, item 19, page 77 (line 15), omit “5”, substitute “14”.
- (86) Schedule 9, item 19, page 78 (after line 1), after subsection (6), insert:
- (6A) Before the agreement is made, the employer must take reasonable steps to ensure that the terms of the agreement are explained to all the persons employed at the time whose employment will be subject to the agreement.
- (87) Schedule 9, item 19, page 78 (line 3), omit “and (5)”, substitute “, (5) and (6A)”.
- (88) Schedule 9, item 19, page 78 (lines 21 to 25), omit section 170LM, substitute:

**170LM Making the application for certification**

- (1) The application for the Commission to certify the agreement must state that it is made under this Division.
- (2) The application must be made no later than 21 days after:
- (a) if it is made in accordance with section 170LJ—the day on which it is approved as mentioned in subsection 170LJ(2); or
- (b) if it is made in accordance with section 170LK or 170LL—the day on which it is made.
- (89) Schedule 9, item 19, page 79 (line 24) to page 80 (line 5), omit sections 170LR and 170LS, substitute:

**170LR Approval by valid majority of employees**

- (1) The agreement must be approved by a valid majority of the persons employed at the time whose employment will be subject to the agreement.
- (2) The employer must take reasonable steps to ensure that:
- (a) at least 14 days before any approval is given, all the persons either have, or have ready access to, the agreement, in writing; and
- (b) before any approval is given, the terms of the agreement are explained to all the persons.

**170LS Making the application for certification**

- (1) The application to the Commission to certify the agreement must state that it is made under this Division.
- (2) The application must be made no later than 21 days after the day on which it is approved as mentioned in subsection 170LR(1).
- (90) Schedule 9, item 19, page 80 (line 12) to page 81 (line 3), omit subsections (2) to (4), substitute:
- (2) The agreement must pass the no-disadvantage test (see Part VIE).
- (3) If:

- (a) the only reason why the Commission must not certify an agreement is that the agreement does not pass the no-disadvantage test; and
  - (b) the Commission is satisfied that certifying the agreement is not contrary to the public interest;
- the agreement is taken to pass the no-disadvantage test.
- (4) An example of a case where the Commission may be satisfied that certifying the agreement is not contrary to the public interest is where making the agreement is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, the single business or part.
- (91) Schedule 9, item 19, page 81 (after line 11), after subsection (6), insert:
- (6A) The explanation of the terms of the agreement to persons as mentioned in paragraph 170LJ(3)(b), subsection 170LK(6A) or paragraph 170LR(2)(b) must have taken place in ways that were appropriate, having regard to the persons' particular circumstances and needs. An example of such a case would be where the persons included:
- (a) women; or
  - (b) persons from a non-English speaking background; or
  - (c) young persons.
- (92) Schedule 9, item 19, page 81 (lines 18 to 28), omit subsection (8) and the note, substitute:
- (8) If the agreement was made in accordance with section 170LK, the employer must not have coerced, or attempted to coerce, any employee:
- (a) not to make a request as mentioned in subsection 170LK(4); or
  - (b) to withdraw such a request.
- (93) Schedule 9, item 19, page 83 (after line 20), at the end of section 170LU, add:
- (7) Paragraph (6)(a) does not apply for the purposes of any application of subsection (5) by the Commission more than 3 years after 22 June 1997, except where the Commission decides, on a case-by-case basis, that the paragraph should apply. Decisions by the Commission as to whether the paragraph should apply must be made by the Commission in accordance with principles established by a Full Bench.
- (8) Despite section 170LT, the Commission must refuse to certify an agreement if:
- (a) the agreement applies only to a part of a single business that is neither of the following:

- (i) a geographically distinct part of the single business; or
    - (ii) a distinct operational or organisational unit within the single business; and
  - (b) the Commission considers that the agreement defines that part in a way that results in the employment of employees not being subject to the agreement where it would be reasonable for the employment to be, having regard to:
    - (i) the nature of the work performed by the employees whose employment is not subject to the agreement; and
    - (ii) the organisational and operational relationships between that part and the rest of the single business; and
  - (c) the Commission considers it unfair that the employment of those employees is not subject to the agreement.
- (94) Schedule 9, item 19, page 84 (line 28), omit “subsection (2)”, substitute “this section”.
- (95) Schedule 9, item 19, page 84 (after line 29), after subsection (1), insert:  
(1A) The agreement ceases to be in operation if:
  - (a) its nominal expiry date has passed; and
  - (b) it is replaced by another certified agreement.
- (96) Schedule 9, item 19, page 84 (line 30) to page 85 (line 2), omit subsection 170LX(2), substitute:  
(2) The agreement:
  - (a) ceases to be in operation if it is terminated under section 170LV, 170ME, 170MG, 170MH or 170MHA; and
  - (b) does not operate if subsection 170LY(2) applies.The agreement may also be set aside under subsection 113(2A).
- (97) Schedule 9, item 19, page 85 (line 4), omit “170MF, 170MG and 170MH”, substitute “170MG, 170MH and 170MHA”.
- (98) Schedule 9, item 19, page 85 (line 21), before “it prevails”, insert “subject to this section,”.
- (99) Schedule 9, item 19, page 85 (before line 26), before the note to section 170LY, insert:  
(2) If:
  - (a) an award is made under subsection 170MX(3) (which deals with the exercise of arbitration powers on termination of a bargaining period); and
  - (b) before the award is made, or after it is made but before its nominal expiry date passes, a certified agreement is certified; and

- (c) the employment of at least one employee is subject to both the award and the certified agreement;  
the certified agreement does not operate at any time while the award operates.
- (3) An exceptional matters order prevails, to the extent of any inconsistency, over a certified agreement that was certified before the order was made.
- (100) Schedule 9, item 19, page 89 (lines 7 to 9), omit subsection 170MC(5), substitute:
- (5) This section does not apply to an agreement:
- (a) to which section 170LL (greenfields agreements) applied; or
  - (b) to which subsection 170LT(3) applied, in circumstances covered by the example in subsection 170LT(4) (short-term business crises).
- (101) Schedule 9, item 19, page 90 (line 9), after “section”, insert “(including as it applies in accordance with section 170MDA)”.
- (102) Schedule 9, item 19, page 90 (after line 16), after section 170MD, insert:
- 170MDA Variation where discrimination between unionists and non-unionists**
- If:
- (a) one or more employees whose employment is not subject to the agreement request the employer to:
    - (i) vary the agreement so that the employment of the employees is subject to the agreement; and
    - (ii) seek the approval of the Commission for the variation under section 170MD; and
  - (b) the employment of the employees would be subject to the agreement if:
    - (i) they were members of an organisation of employees or of a particular organisation of employees; or
    - (ii) they were not members of an organisation of employees or of a particular organisation of employees; and
  - (c) the variation would not cause the agreement to become a multiple-business agreement;
- the employer must comply with the request.
- (2) If, in accordance with the request, the employer seeks the approval of the Commission to the variation under subsection 170MD(3), the Commission must disregard paragraph 170MD(3)(a) in deciding whether to approve the variation.
- (103) Schedule 9, item 19, page 91 (lines 4 to 24), omit section 170MF.



- (104) Schedule 9, item 19, page 91 (line 27), omit “On or before the nominal expiry date”, substitute “Either”.

Note about Schedule 9, item 19: The heading to section 170MG (page 91, lines 25 and 26) is altered by omitting “on or before its nominal expiry date” and substituting “where valid majority approve at any time”.

- (105) Schedule 9, item 19, page 92 (lines 8 to 27), omit section 170MH, substitute:

**170MH Terminating a certified agreement in public interest after nominal expiry date**

- (1) After the nominal expiry date of a certified agreement:
- (a) the employer; or
  - (b) a majority of the employees whose employment is subject to the agreement; or
  - (c) an organisation of employees that is bound by the agreement and that has at least one member whose employment is subject to the agreement;
- may apply to the Commission to have the agreement terminated.
- (2) On receiving the application, the Commission must take such steps as it considers appropriate to obtain the views of persons bound by the agreement about whether it should be terminated.
- (3) If, after complying with subsection (2), the Commission considers that it is not contrary to the public interest to terminate the agreement, the Commission must, by order, terminate the agreement.
- (4) The termination takes effect when the Commission’s order takes effect.

**170MHA Terminating an agreement in a way provided under agreement after nominal expiry date**

- (1) If:
- (a) a certified agreement makes provision for it to be terminated if certain conditions are met; and
  - (b) those conditions are met after the agreement’s nominal expiry date has passed;
- any of the persons mentioned in subsection (2) may apply to the Commission to have the termination approved.
- (2) The persons are:
- (a) the employer; or
  - (b) an employee whose employment is subject to the agreement; or
  - (c) an organisation of employees that is bound by the agreement and that has at least one member whose employment is subject to the agreement.

- (3) If the Commission is satisfied that the requirements of paragraphs (1)(a) and (b) are complied with, it must, by order, approve the termination.
  - (4) If the Commission does so, the agreement terminates when the Commission's order takes effect.
- (106) Schedule 9, item 19, page 96 (line 20) to page 97 (line 11), omit section 170MN, substitute:

**170MN Industrial action etc. must not be taken until after nominal expiry date of certain agreements and awards**

- (1) From the time when:
  - (a) a certified agreement; or
  - (b) an award under subsection 170MX(3) (which deals with the exercise of arbitration powers on termination of a bargaining period);

comes into operation until its nominal expiry date has passed, an employee, organisation or officer covered by subsection (2) must not, for the purpose of supporting or advancing claims against the employer in respect of the employment of employees whose employment is subject to the agreement or award, engage in industrial action.
- (2) For the purposes of subsection (1), the following are covered by this subsection:
  - (a) any employee whose employment is subject to the agreement or award;
  - (b) an organisation of employees that is bound by the agreement or award;
  - (c) an officer or employee of such an organisation acting in that capacity.
- (3) If the employee, organisation or officer contravenes subsection (1), the action concerned is not protected action.
- (4) From the time when:
  - (a) a certified agreement; or
  - (b) an award under subsection 170MX(3);

comes into operation until its nominal expiry date has passed, the employer must not, for the purpose of supporting or advancing claims in respect of the employment of employees whose employment is subject to the agreement or award, lock out such an employee from his or her employment.
- (5) If the employer does so, the lockout is not protected action.
- (6) Engaging in industrial action, or locking out an employee, in contravention of section 170VU is not protected action.

(107) Schedule 9, item 19, page 103 (line 15), omit “(6)”, substitute “(6A)”.

(108) Schedule 9, item 19, page 103 (after line 22), after paragraph (2)(a), insert:

(aa) is not genuinely trying to reach an agreement with the other negotiating parties; or

(109) Schedule 9, item 19, page 104 (after line 25), after subsection (6), insert:

(6A) A circumstance for the purposes of subsection (1) is that:

(a) immediately before the commencement of this section, the wages and conditions of the kind of employees whose employment will be subject to the agreement were determined by a paid rates award, or would have been so determined if a certified agreement, an enterprise flexibility agreement (within the meaning of this Act as then in force) or a State employment agreement had not prevailed over the award; and

(b) so far as the wages and conditions of the kind of employees whose employment will be subject to the agreement were, before the commencement of this section, customarily determined by an award or a State award, they were determined by a paid rates award; and

(c) there is no reasonable prospect of the negotiating parties reaching an agreement under Division 2 or 3 during the bargaining period.

(110) Schedule 9, item 19, page 104 (line 28), omit “or (6)”, substitute “, (6) or (6A)”.

(111) Schedule 9, item 19, page 105 (line 17), after “170MW(3)”, insert “or (6A)”.

Note about Schedule 9, item 19: The heading to section 170MX (page 105, line 15) is altered by adding at the end “or (6A)”.

(112) Schedule 9, item 19, page 105 (lines 34 and 35), omit “a written order”, substitute “an award”.

(113) Schedule 9, item 19, page 106 (lines 16 and 17), omit subsection (7).

(114) Schedule 9, item 19, page 106 (line 27), omit “order”, substitute “award”.

Note about Schedule 9, item 19: The heading to section 170MZ (page 106, line 26) is altered by omitting “Orders” and substituting “Awards”.

(115) Schedule 9, item 19, page 106 (line 28), omit “nominated”, substitute “nominal”.

(116) Schedule 9, item 19, page 106 (line 29), omit “order”, substitute “award”.

(117) Schedule 9, item 19, page 107 (lines 1 and 2), omit “order” (wherever occurring), substitute “award”.

- (118) Schedule 9, item 19, page 107 (line 3), omit “order’s nominated”, substitute “award’s nominal”.
- (119) Schedule 9, item 19, page 107 (line 4), omit “order”, substitute “award”.
- (120) Schedule 9, item 19, page 107 (line 5), omit “an employer”, substitute “the employer”.
- (121) Schedule 9, item 19, page 107 (line 6), omit “order”, substitute “award”.
- (122) Schedule 9, item 19, page 107 (lines 10 to 15), omit subsection (5), substitute:
- (5) If:
- (a) the award’s nominal expiry date has passed; and
- (b) either:
- (i) the employer, or an organisation, bound by the award; or
- (ii) a majority of the employees to whom the award applies;
- request the Commission in writing to terminate the award; and
- (c) the Commission has given the following a reasonable opportunity to be heard in relation to the request:
- (i) the employer bound by the award;
- (ii) any organisations bound by the award;
- (iii) the employees to whom the award applies; and
- (d) the Commission considers that it is not contrary to the public interest to terminate the award;
- the Commission must terminate the award.
- (123) Schedule 9, item 19, page 107 (line 16), omit “order”, substitute “award”.
- (124) Schedule 9, item 19, page 107 (line 20), omit “order’s nominated”, substitute “award’s nominal”.
- (125) Schedule 9, item 19, page 107 (line 23), omit “order”, substitute “award”.
- (126) Schedule 9, item 19, page 109 (after line 16), at the end of section 170NC, add:
- (3) An employer must not coerce, or attempt to coerce, an employee of the employer:
- (a) not to make a request as mentioned in subsection 170LK(4) in relation to an agreement that the employer proposes to make; or
- (b) to withdraw such a request.

Note about Schedule 9, item 19: The heading to section 170NC (page 109, line 4) is altered by adding at the end “etc.”.

- (127) Schedule 9, item 19, page 109 (before line 21), before paragraph 170ND(a), insert:
- (aa) section 170MDA;
- (128) Schedule 9, item 19, page 109 (after line 22), after paragraph 170ND(b), insert:
- (ba) section 170NB;
- (129) Schedule 9, item 19, page 110 (after line 6), after subsection (2), insert:
- (2A) An application for an order under subsection (1) that relates to a contravention of section 170MDA may be made by:
- (a) the employees making the request mentioned in that section; or
  - (b) an organisation of employees of which any of the employees making that request is a member; or
  - (c) an inspector; or
  - (d) any other person prescribed by the regulations.
- (130) Schedule 9, item 19, page 110 (after line 21), after subsection (4), insert:
- (4A) An application for an order under subsection (1) that relates to a contravention of section 170NB may be made by:
- (a) any employee who allegedly was disadvantaged because of the discrimination mentioned in subsection 170NB(1); or
  - (b) an organisation of employees of which that employee is a member; or
  - (c) an inspector; or
  - (d) any other person prescribed by the regulations.
- (131) Schedule 9, item 23, page 113 (after line 30), after subitem (4), insert:
- 170MX(3) awards and exceptional matters orders prevail over pre- and post-commencement certified agreements*
- (4A) Subsections 170LY(2) and (3) of the *Workplace Relations Act 1996* as amended by this Schedule apply to certified agreements whether certified before or after the commencement of this Schedule.
- (132) Schedule 9, item 23, page 114 (after line 6), at the end of the item, add:
- Annual report under former section 170RC*
- (7) Section 170RC of the *Workplace Relations Act 1996* as in force immediately before the commencement of this Schedule does not require, and is taken never to have required, the Minister to cause a person to review and to report to the Minister in relation to the reporting period ending on 31 December 1996.
- (133) Schedule 10, item 2, page 116 (lines 14 to 21), omit paragraph (2)(b), substitute:

- (b) the EFA further continues in force until terminated by the Commission under subitem (3A).
- (134) Schedule 10, item 2, page 116 (lines 22 to 32), omit subitem (3), substitute:
- Period of operation ending before commencement of amendments*
- (3) If the period of the EFA ended before the commencement of this Part, the EFA continues in force after the commencement of this Part until terminated by the Commission under subitem (3A).
- Termination by Commission*
- (3A) The Commission may, on application by a party to an EFA, terminate the EFA if the Commission considers that it is not contrary to the public interest to do so. The termination takes effect at the end of the day on which the Commission makes its determination, or at such later time as is specified in the determination.
- (135) Schedule 10, item 2, page 117 (after line 7), after subitem (5), insert:
- EFA displaced by certain awards or orders*
- (5A) The following prevail over an EFA, to the extent of any inconsistency:
- (a) an exceptional matters order;
  - (b) an award made under subsection 170MX(3) of the Workplace Relations Act.
- (136) Schedule 11, item 3, page 118 (line 17) to page 120 (line 5), omit section 170VA, substitute:

### 170VA Interpretation

In this Part, unless the contrary intention appears:

***additional approval requirements*** means the additional approval requirements in section 170VPA.

***ancillary document*** means any of the following:

- (a) a variation agreement;
- (b) an extension agreement;
- (c) a termination agreement;
- (d) a termination notice.

***approval notice*** means an approval notice issued by the Employment Advocate or Commission under Division 5.

***approved*** means approved under Division 5 by the Employment Advocate or Commission.

***AWA*** has a meaning affected by sections 170VB and 170VPJ.

***AWA date*** means the date on which the employer and employee sign the AWA or, if they sign on different dates, the later of those dates.

***bargaining agent*** means a person or group of persons duly appointed as a bargaining agent under section 170VK.

***comparable employee***, in relation to an AWA, means an employee of the employer who does the same kind of work as the employee who is a party to the AWA.

***constitutional trade or commerce*** means trade or commerce:

- (a) between Australia and a place outside Australia; or
- (b) between the States; or
- (c) within a Territory, between a State and a Territory or between 2 Territories.

***eligible court*** means any of the following:

- (a) the Federal Court of Australia;
- (b) a District, County or Local Court;
- (c) a magistrate's court.

***employee*** has a meaning affected by section 170VB.

***employer*** has a meaning affected by section 170VB.

***existing employee***, in relation to an AWA, means an employee who signed the AWA after commencing the employment to which the AWA relates.

***extension agreement*** means an agreement to extend the nominal expiry date of an AWA.

***file***, in relation to an AWA or ancillary document, means file with the Employment Advocate.

***filing receipt*** means a receipt issued by the Employment Advocate.

***filing requirements*** means the filing requirements in section 170VO.

***new employee***, in relation to an AWA, means an employee who signed the AWA before, or at the time of, commencing the employment to which the AWA relates.

***no-disadvantage test*** means the no-disadvantage test set out in Part VI.

***nominal expiry date*** means the nominal expiry date that applies under section 170VH.

***party***, in relation to an AWA or ancillary document, means the employer or employee.

***period of operation***, in relation to an AWA, means the period of operation as determined under section 170VJ.

***referral notice*** means a referral notice issued by the Employment Advocate under Division 5.

**refusal notice** means a refusal notice issued by the Employment Advocate or Commission under Division 5.

**relevant or designated award** means the relevant or designated award that is used when applying the no-disadvantage test set out in Part VI.

**State agreement** means an employment agreement made under, or for the purposes of, a law of a State.

**sure** means not having any doubts.

**termination agreement** means an agreement to terminate an AWA.

**termination notice** means a notice of termination under section 170VM.

**variation agreement** means an agreement to vary an AWA.

**verified copy**, in relation to a document, means a copy that is certified as being a true copy of the document.

- (137) Schedule 11, item 3, page 120 (after line 28), at the end of Division 1, add:

**170VCA Functions of Commission**

- (1) The Commission must, as far as practicable, perform its functions under this Part in a way that furthers the objects of this Act.
- (2) Section 90 does not apply to the performance of functions of the Commission under this Part.
- (3) In performing its functions under this Part, the Commission may not act under paragraph 111(1)(g) on the grounds specified in subparagraph (i), (ii) or (iii) of that paragraph.

- (138) Schedule 11, item 3, page 120 (line 29) to page 127 (line 9), omit Divisions 2 to 5, substitute:

**Division 2—General rules about AWAs and ancillary documents**

**170VD AWAs and ancillary documents only have effect as provided by this Part**

An AWA or ancillary document has effect as provided by this Part, and not otherwise. In particular:

- (a) an AWA for a new employee has no effect before a filing receipt is issued for the AWA; and
- (b) an AWA for an existing employee has no effect before an approval notice is issued for the AWA.

**170VE Collective agreements**

- (1) For the purposes of this Part, 2 or more agreements that have been negotiated collectively may be included in the same document if the



same employer is a party to all the agreements. The agreements need not be in the same terms.

- (2) An AWA for a new employee cannot be included in the same document as an AWA for an existing employee.

### **Division 3—Making, varying or terminating an AWA**

#### **170VF Employer and employee may make an AWA**

- (1) An employer and employee may make a written agreement, called an Australian workplace agreement, that deals with matters pertaining to the relationship between an employer and employee.
- (2) The AWA may be made before commencement of the employment.

#### **170VG Content of AWA**

- (1) The employer must ensure that the AWA includes the provisions relating to discrimination that are prescribed by the regulations. If the AWA does not in fact include those provisions, the AWA is taken to include those provisions.
- (2) The employer must ensure that the AWA does not include any provisions that prohibit or restrict disclosure of details of the AWA by either party to another person.
- (3) The employer must ensure that the AWA includes a dispute resolution procedure. If the AWA does not in fact include a dispute resolution procedure, the AWA is taken to include the model procedure that is prescribed by the regulations.
- (4) A dispute resolution procedure that is included in an AWA under subsection (3), or prescribed by the regulations for the purposes of subsection (3), may confer powers on the Commission to settle disputes between the parties to the AWA about the application or interpretation of the AWA. The Commission may exercise those powers.

#### **170VH Nominal expiry date of AWA**

- (1) An AWA may specify a date as its nominal expiry date. The date cannot be more than 3 years after the AWA date.
- (2) If no date is specified, then the nominal expiry date is the 3rd anniversary of the AWA date.
- (3) An employer and employee may make a written agreement that extends the nominal expiry date. The extended date cannot be more than 3 years after the AWA date.
- (4) The extension agreement has no effect unless a filing receipt is issued for the extension agreement at least 21 days before the nominal expiry date that is to be extended.
- (5) The extension agreement takes effect on the day after an approval notice is issued for the extension agreement.

**170VJ Period of operation of AWA**

- (1) An AWA for a new employee starts operating on the later of:
  - (a) the day after a filing receipt is issued for the AWA; or
  - (b) the day specified in the AWA as the starting day; or
  - (c) the day the employment commences;and stops operating at the earlier of the following times:
  - (d) the end of the day when a refusal notice is issued in relation to the AWA;
  - (e) the time when a termination under section 170VM takes effect;
  - (f) the time when another AWA between the employer and employee starts to operate.
- (2) An AWA for an existing employee starts operating on the later of:
  - (a) the day after an approval notice is issued for the AWA; or
  - (b) the day specified in the AWA as the starting day;and stops operating at the earlier of the following times:
  - (c) the time when a termination under section 170VM takes effect;
  - (d) the time when another AWA between the employer and employee starts to operate.

**170VK Bargaining agents**

- (1) An employer or employee may appoint a person to be his or her bargaining agent in relation to the making, approval, variation or termination of an AWA. The appointment must be made in writing.
- (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) An employer or employee must not coerce, or attempt to coerce, the other party:
  - (a) to appoint, or not to appoint, a particular person as an authorised bargaining agent; or
  - (b) to terminate the appointment of an authorised bargaining agent.
- (5) In this section:  
*person* includes a group of persons.

**170VL Varying the terms of an AWA**

- (1) An employer and employee may make a written agreement varying an AWA.
- (2) The variation takes effect on the later of:
  - (a) the day after an approval notice is issued for the variation agreement; or
  - (b) the day specified in the variation agreement as the date of effect.
- (3) Section 170VG applies to the AWA as varied in the same way as that section applies to the original AWA.

**170VM Terminating an AWA***Termination by a termination agreement*

- (1) The employer and employee may at any time make a written agreement to terminate the AWA.
- (2) A termination under subsection (1) takes effect at the end of the day on which an approval notice is issued for the termination agreement or at such later time as is specified in the termination agreement.

*Termination by the Commission*

- (3) After the nominal expiry date of an AWA, the Commission may, on application by either party, terminate the AWA if the Commission considers that it is not contrary to the public interest to do so.
- (4) The Commission must issue a copy of its determination to the parties and to the Employment Advocate.
- (5) A termination under subsection (3) takes effect at the end of the day on which the Commission issues copies of its determination, or at such later time as is specified in the determination.

*Termination in accordance with the AWA*

- (6) After the nominal expiry date of an AWA, the employer or the employee may file a termination notice, stating that the AWA is to be terminated in a manner provided for in the AWA.
- (7) A termination under subsection (6) takes effect at the end of the day on which an approval notice is issued for the termination notice, or at a later time specified in the termination notice.

**Division 4—Filing AWAs and ancillary documents with  
Employment Advocate****170VN Filing AWAs and ancillary documents with Employment Advocate**

- (1) An AWA or ancillary document may be filed with the Employment Advocate.

- (2) If the Employment Advocate is satisfied that the filing requirements for the document have been met, the Employment Advocate must issue a receipt to the person who filed the document.
- (3) The Employment Advocate must not issue a filing receipt for an AWA unless the AWA was filed within 14 days after the AWA date.

### **170VO Filing requirements**

#### *AWA*

- (1) The filing requirements for an AWA are:
  - (a) the AWA must be signed and dated by each of the parties, and the signatures must be witnessed; and
  - (b) the AWA must be accompanied by a declaration by the employer:
    - (i) declaring that the AWA complies with section 170VG; and
    - (ii) declaring that, before the employee signed the AWA, the employer gave the employee a copy of an information statement prepared by the Employment Advocate; and
    - (iii) declaring whether or not the employer has offered an AWA in the same terms to all comparable employees; and
  - (c) the employer must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.
- (2) The information statement prepared by the Employment Advocate for the purposes of subsection (1) must include information about the following matters, but may include other information:
  - (a) Commonwealth statutory entitlements;
  - (b) occupational health and safety law;
  - (c) services provided by the Employment Advocate;
  - (d) bargaining agents.

#### *Variation agreement*

- (3) The filing requirements for a variation agreement are:
  - (a) the variation agreement must be signed and dated by each of the parties, and the signatures must be witnessed; and
  - (b) the variation agreement must be accompanied by a declaration by the employer:
    - (i) declaring that the AWA, as varied, complies with section 170VG; and

- (ii) declaring whether or not the employer has offered a variation agreement in the same terms to all comparable employees who also have an AWA in the same terms with the employer; and
- (c) the employer must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.

*Extension agreement*

- (4) The filing requirements for an extension agreement are:
  - (a) the extension agreement must be signed and dated by each of the parties, and the signatures must be witnessed; and
  - (b) the employer must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.

*Termination agreement*

- (5) The filing requirements for a termination agreement are:
  - (a) the termination agreement must be signed and dated by each of the parties, and the signatures must be witnessed; and
  - (b) the employer must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.

*Termination notice*

- (6) The filing requirements for a termination notice are:
  - (a) the termination notice must be signed and dated by the party or parties filing the notice, and each signature must be witnessed; and
  - (b) the party or parties filing the termination notice must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.

**170VP Employer's declaration must be accurate**

An employer must not, in a declaration filed with the Employment Advocate for the purposes of this Part, make a statement that the employer knows, or ought reasonably to know, is false or misleading.

**Division 5—Approval of AWAs and ancillary documents**

### Subdivision A—Preliminary

#### 170VPA Additional approval requirements for AWA and ancillary documents

##### *AWA*

- (1) The additional approval requirements for an AWA are:
  - (a) the AWA complies with section 170VG; and
  - (b) the employee received a copy of the AWA at least the required number of days before signing the AWA; and
  - (c) the employer explained the effect of the AWA to the employee between:
    - (i) the time the employee first received a copy of the AWA; and
    - (ii) the time when the employee signed the AWA; and
  - (d) the employee genuinely consented to making the AWA; and
  - (e) in a case where the employer failed to offer an AWA in the same terms to all comparable employees—the employer did not act unfairly or unreasonably in failing to do so.

Note: An employer might have valid reasons for not offering an AWA in the same terms to all comparable employees.

For the purposes of this subsection, the ***required number of days*** is 5 for a new employee and 14 for an existing employee.

##### *Variation agreement*

- (2) The additional approval requirements for a variation agreement are:
  - (a) the AWA, as varied, complies with section 170VG; and
  - (b) the employee received a copy of the variation agreement at least 14 days before signing the variation agreement; and
  - (c) the employer explained the effect of the variation agreement to the employee between:
    - (i) the time the employee first received a copy of the variation agreement; and
    - (ii) the time when the employee signed the variation agreement; and
  - (d) the employee genuinely consented to making the variation agreement; and
  - (e) in a case where the employer did not offer a variation agreement in the same terms to all comparable employees who also have an AWA in the same terms—the employer did not act unfairly or unreasonably in not doing so.

Note: An employer might have valid reasons for not offering a variation agreement in the same terms to all comparable employees.

##### *Extension agreement*

- (3) The additional approval requirement for an extension agreement is that the employee genuinely consented to making the extension agreement.

*Termination agreement*

- (4) The additional approval requirement for a termination agreement is that the employee genuinely consented to making the termination agreement.

*Termination notice*

- (5) The additional approval requirement for a termination notice is that the termination is in accordance with the AWA.

**Subdivision B—Approval by Employment Advocate**

**170VPB Approval of AWA by Employment Advocate**

- (1) The Employment Advocate must approve an AWA for which a filing receipt has been issued if:
- (a) the Employment Advocate is sure that the AWA passes the no-disadvantage test; and
  - (b) the Employment Advocate is satisfied that the AWA meets the additional approval requirements.

Note: The additional approval requirements are in section 170VPA.

- (2) If the Employment Advocate has concerns about whether the AWA passes the no-disadvantage test, but those concerns are resolved by:
- (a) a written undertaking given by the employer and accepted by the Employment Advocate; or
  - (b) other action by the parties;
- the Employment Advocate must approve the AWA.
- (3) If the Employment Advocate has concerns about whether the AWA passes the no-disadvantage test and those concerns are not resolved under subsection (2), the Employment Advocate must refer the AWA to the Commission.
- (4) If the Employment Advocate is not satisfied that the AWA meets the additional approval requirements, the Employment Advocate must refuse to approve the AWA.

**170VPC Approval of variation agreement by Employment Advocate**

- (1) The Employment Advocate must approve a variation agreement for which a filing receipt has been issued if:
- (a) the Employment Advocate is sure that the AWA, as varied, passes the no-disadvantage test; and
  - (b) the Employment Advocate is satisfied that the variation agreement meets the additional approval requirements.

Note: The additional approval requirements are in section 170VPA.

- (2) If the Employment Advocate has concerns about whether the AWA, as varied, passes the no-disadvantage test, but those concerns are resolved by:
  - (a) a written undertaking given by the employer and accepted by the Employment Advocate; or
  - (b) other action by the parties;
 the Employment Advocate must approve the variation agreement.
- (3) If the Employment Advocate has concerns about whether the AWA, as varied, passes the no-disadvantage test and those concerns are not resolved under subsection (2), the Employment Advocate must refer the variation agreement to the Commission.
- (4) If the Employment Advocate is not satisfied that the variation agreement meets the additional approval requirements, the Employment Advocate must refuse to approve the variation agreement.

**170VPD Approval of other ancillary documents by Employment Advocate**

- (1) This section applies to the following ancillary documents:
  - (a) an extension agreement;
  - (b) a termination agreement;
  - (c) a termination notice.
- (2) The Employment Advocate must approve the ancillary document if the Employment Advocate is satisfied that the ancillary document meets the additional approval requirements for the document concerned. Otherwise, the Employment Advocate must refuse to approve the ancillary document.

**170VPE Protocol for referring AWAs and variation agreements to the Commission**

- (1) As soon as practicable after the commencement of this section, the President must establish a protocol to provide general guidance to the Employment Advocate concerning the referral of AWAs or variation agreements to the Commission. The terms of the protocol must have the concurrence of the Employment Advocate.
- (2) In deciding whether to refer an AWA or variation agreement to the Commission, the Employment Advocate must apply the protocol.

**170VPF Employment Advocate must issue approval, refusal or referral notice**

- (1) If the Employment Advocate approves an AWA or ancillary document, the Employment Advocate must issue an approval notice to the employer.
- (2) If the Employment Advocate refuses to approve an AWA or ancillary document, the Employment Advocate must issue a refusal notice to the employer.



- (3) If the Employment Advocate refers an AWA or variation agreement to the Commission, the Employment Advocate must issue a referral notice to the employer, advising of the referral.
- (4) In each approval notice, refusal notice or referral notice issued under this section, the Employment Advocate must identify the relevant or designated award that applies to the AWA to which the notice relates.

### **Subdivision C—Approval by Commission**

#### **170VPFA Withdrawal of AWA or variation agreement**

Either party to an AWA (other than an AWA for a new employee) or variation agreement that has been referred to the Commission by the Employment Advocate may withdraw the AWA or variation agreement by notice in writing lodged with the Commission.

#### **170VPG Approval of AWA by Commission**

- (1) This section applies to an AWA that is referred to the Commission by the Employment Advocate.
- (2) The Commission must approve the AWA if the Commission is satisfied that the AWA passes the no-disadvantage test.
- (3) If the Commission has concerns about whether the AWA passes the no-disadvantage test, but those concerns are resolved by:
  - (a) a written undertaking given by the employer and accepted by the Commission; or
  - (b) other action by the parties;the Commission must approve the AWA.
- (4) If the Commission considers that it is not contrary to the public interest to approve the AWA, it must approve the AWA (whether or not subsection (2) or (3) requires the Commission to approve the AWA).

Note: An example of a case where the Commission may be satisfied that approving the AWA is not contrary to the public interest is where making the AWA is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, a business or part of a business.

- (5) In any case where the Commission is not required to approve the AWA, the Commission must refuse to approve the AWA.

#### **170VPH Approval of variation agreement by Commission**

- (1) This section applies to a variation agreement that is referred to the Commission by the Employment Advocate.
- (2) The Commission must approve the variation agreement if the Commission is satisfied that the AWA, as varied, passes the no-disadvantage test.
- (3) If the Commission has concerns about whether the AWA, as varied, passes the no-disadvantage test, but those concerns are resolved by:

- (a) a written undertaking given by the employer and accepted by the Commission; or
  - (b) other action by the parties;
- the Commission must approve the variation agreement.
- (4) If the Commission considers that it is not contrary to the public interest to approve the variation agreement, it must approve the variation agreement (whether or not subsection (2) or (3) requires the Commission to approve the variation agreement).
- Note: An example of a case where the Commission may be satisfied that approving the variation agreement is not contrary to the public interest is where making the variation agreement is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, a business or part of a business.
- (5) In any case where the Commission is not required to approve the variation agreement, the Commission must refuse to approve the variation agreement.

**170VPI Commission must issue approval or refusal notice etc.**

- (1) If the Commission approves an AWA or a variation agreement, the Commission must:
- (a) issue an approval notice to the employer; and
  - (b) send a copy of the approval notice to the Employment Advocate; and
  - (c) send the Employment Advocate a copy of the AWA or variation agreement that was approved.
- Note: An undertaking accepted in connection with an AWA is deemed to form part of the AWA. Therefore a copy of the undertaking will be sent to the Employment Advocate under this section.
- (2) If the Commission refuses to approve an AWA or a variation agreement, the Commission must:
- (a) issue a refusal notice to the employer; and
  - (b) send a copy of the refusal notice to the Employment Advocate.

**Subdivision D—Miscellaneous**

**170VPJ Undertakings deemed to be included in AWA**

An undertaking accepted by the Employment Advocate or Commission under this Division is taken to be included in the AWA.

**170VPK Employment Advocate to issue copies of approved AWAs and ancillary documents**

- (1) After an AWA or ancillary document is approved by the Employment Advocate, the Employment Advocate must issue to the employer a copy of the AWA or ancillary document, as approved.

- (2) After an AWA or variation agreement is approved by the Commission, the Employment Advocate must issue to the employer a copy of the AWA or variation agreement, as approved.

Note: An undertaking accepted in connection with an AWA is deemed to form part of the AWA. Therefore a copy of the undertaking will be issued to the employer under this section.

- (139) Schedule 11, item 3, page 127 (lines 12 to 14), omit subsection (1), substitute:

- (1) During its period of operation, an AWA operates to the exclusion of any award that would otherwise apply to the employee's employment. This subsection has effect subject to subsections (1A) and (1B).

- (1A) An AWA is of no effect if it is made:

- (a) after the commencement of an award that is made under subsection 170MX(3) and applies to the employee's employment; and
- (b) before the nominal expiry date of the award.

- (1B) An AWA does not operate to the exclusion of an exceptional matters order, but prevails over an exceptional matters order to the extent of any inconsistency.

- (140) Schedule 11, item 3, page 131 (lines 9 to 30), omit sections 170VX and 170VY, substitute:

#### **170VX Compensation to new employee for shortfall in entitlements**

- (1) If an AWA for a new employee stops operating because of the issue of a refusal notice and the amount worked out under paragraph (a) below is less than the amount worked out under paragraph (b) below, the employee is entitled to recover the shortfall from the employer in an eligible court:
  - (a) the total value of the entitlements to which the employee became entitled under the AWA for the period while it was in operation;
  - (b) the total value of the entitlements to which the employee would have been entitled for that period under the relevant or designated award, if the AWA had not been made, in respect of the employment to which the AWA relates.
- (2) If an AWA that has been approved for a new employee includes an undertaking by the employer and the amount worked out under paragraph (a) below is less than the amount worked out under paragraph (b) below, the employee is entitled to recover the shortfall from the employer in an eligible court:
  - (a) the total value of the entitlements to which the employee became entitled under the AWA for the period before it was approved;

- (b) the total value of the entitlements to which the employee would have been entitled for that period if the AWA, as filed, had included the undertaking by the employer.
- (141) Schedule 11, item 3, page 135 (lines 15 to 17), omit subsection (1), substitute:
- (1) A person who is not a party to negotiations relating to an AWA must not use threats or intimidation with the intention of hindering the negotiations or the making of the AWA. For this purpose *party to negotiations* includes a bargaining agent.
- (142) Schedule 11, item 3, page 136 (lines 1 to 33), omit sections 170WH and 170WI, substitute:

**170WH Employer must give copies of documents to employee**

- (1) As soon as practicable after an employer receives any of the following documents from the Employment Advocate or Commission, the employer must give the employee a copy of the document:
- (a) a filing receipt;
- (b) an approval notice, refusal notice or referral notice;
- (c) an AWA or ancillary document, as approved.
- (2) The employer must give the employee any other document prescribed by the regulations, within the period required by the regulations.

**170WHA Intervention not permitted**

A person other than:

- (a) a party to an AWA; or
- (b) a bargaining agent of a party;

must not be allowed to make submissions, or to be heard, in relation to the filing, approval, variation or termination of the AWA.

**170WHB Identity of AWA parties not to be disclosed**

- (1) A person (the *entrusted person*) must not disclose protected information that the entrusted person knows, or has reasonable grounds to believe, will identify another person (the *AWA party*) as being, or having been, a party to an AWA.

Penalty: Imprisonment for 6 months.

- (2) Each of the following is an exception to the prohibition in subsection (1):
- (a) the disclosure is made by the entrusted person in the course of performing functions or duties as a Registry official;
- (b) the disclosure is authorised by the regulations;
- (c) the disclosure is required or permitted by another Act;

- (d) the disclosure is authorised in writing by the AWA party.
- (3) For the purposes of determining the burden of proof in proceedings for an offence against subsection (1), the exceptions in subsection (2) are taken to be part of the description of the offence.
- (4) In this section:

***protected information*** means information that was acquired by the entrusted person:

- (a) in the course of performing functions or duties as a Registry official; or
- (b) from a Registry official who disclosed the information as authorised by the regulations.

***Registry official*** means:

- (a) the Industrial Registrar; or
- (b) a member of the staff of the Industrial Registry (including a Deputy Industrial Registrar).

#### **170WHC Commission not to publish AWA determinations**

The Commission is not obliged under section 143 to publish any determination of the Commission that approves, refuses to approve or terminates an AWA. However, if the Commission does publish such a determination under section 143, the Commission must ensure that the publication does not disclose the identity of either party to the AWA.

#### **170WHD Hearings to be in private**

Any hearing by the Commission for the purposes of this Part must be held in private.

#### **170WI Evidence**

- (1) The Employment Advocate may issue a verified copy of any document filed with, or issued or approved by, the Employment Advocate or Commission under this Part. The verified copy may only be issued to a person who is or was a party to the AWA or ancillary document to which the verified copy relates.
- (2) The Employment Advocate may issue a certificate stating any one or more of the following:
  - (a) that specified AWAs or ancillary documents are the only such documents that were filed in relation to a specified employer and employee before a date specified in the certificate; or
  - (b) that specified notices are the only such notices that were issued to a specified employer by the Employment Advocate or Commission before a date specified in the certificate; or

- (c) that a filing receipt, approval notice, refusal notice or referral notice was issued for a specified AWA or ancillary document on a specified day.

The certificate may only be issued to a person who is or was a party to each of the documents to which the certificate relates.

- (3) In all courts and proceedings:
  - (a) a verified copy issued by the Employment Advocate is evidence of the document of which it is a verified copy; and
  - (b) a certificate issued by the Employment Advocate under subsection (2) is evidence of the matters stated in the certificate.
- (4) A document that purports to be a verified copy, or certificate, referred to in subsection (3) is taken to be such a copy or certificate, unless the contrary is proved.
- (143) Schedule 12, item 86, page 151 (lines 20 to 23), omit paragraph (c).
- (144) Schedule 12, item 86, page 151 (line 25) to page 152 (line 4), omit subsections (2) to (4), substitute:
  - (2) The certificate must not identify any of the employees concerned. However, it must identify the organisation, the employer and the proposed agreement.
  - (3) The certificate is, for all purposes of this Act, evidence that the employee or employees made the request or that the requirement has ceased to apply.
- (145) Schedule 12, item 87, page 152 (lines 8 to 16), omit subsection (1), substitute:
  - (1) For:
    - (a) the period from the commencement of this section until the end of 31 December 1997; and
    - (b) the period of 2 years starting on 1 January 1998 and each following period of 2 years;
 the Minister must cause a person to review and report to the Minister in writing about:
    - (c) developments, in Australia during that period, in bargaining for the making of agreements covered by Parts VIB and VID; and
    - (d) in particular, the effects that such bargaining has had in Australia during that period on the employment (including wages and conditions of employment) of women, part-time employees, persons from a non-English speaking background and young persons.
- (146) Schedule 13, page 154 (line 2) to page 175 (line 3), omit the Schedule, substitute:

## Schedule 13—Amendments relating to no-disadvantage test

### *Workplace Relations Act 1996*

#### 1 After Part VID

Insert:

### Part VIE—No-disadvantage test

#### 170X Interpretation

In this Part, unless the contrary intention appears:

**agreement** means:

- (a) a certified agreement; or
- (b) an AWA.

**approved apprenticeship** means an apprenticeship approved by an approving authority for the purposes of section 170XD.

**approved traineeship** means a traineeship other than:

- (a) a National Training Wage traineeship; or
- (b) a Career Start traineeship; or
- (c) an Australian Traineeship System traineeship;

approved by an approving authority for the purposes of section 170XC.

**approving authority** means any person or unincorporated body that:

- (a) is a State or Territory training authority that exercises approval powers in relation to traineeships or apprenticeships; or
- (b) is an Industry Training Advisory Body; or
- (c) meets the criteria prescribed for the purposes of this definition;

and is declared in writing to be an approving authority for the purposes of this Part by:

- (d) the Minister for Employment, Education, Training and Youth Affairs; or
- (e) the Minister for Schools, Vocational Education and Training.

**award** includes a State award, but does not include:

- (a) an exceptional matters order; or
- (b) an award under section 170MX.

**designated award**, in relation to a person to whom an agreement will apply, means an award that the Employment Advocate under section 170XE, or the Commission under section 170XF, has

determined to be appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

**initial day** means:

- (a) in relation to an AWA—the day on which it was made; or
- (b) in relation to a certified agreement—the day on which it was certified by the Commission.

**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.

#### **170XA When does an agreement pass the no-disadvantage test?**

- (1) An agreement passes the no-disadvantage test if it does not disadvantage employees in relation to their terms and conditions of employment.
- (2) Subject to sections 170XB, 170XC and 170XD, an agreement disadvantages employees in relation to their terms and conditions of employment only if its approval or certification 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 other law of the Commonwealth, or of a State or Territory, that the Employment Advocate or the Commission (as the case may be) considers relevant.

#### **170XB Special case—employee eligible for the Supported Wage System**

If an agreement provides for the payment of wages to an employee who is eligible for the Supported Wage System at a rate that is not less than the rate set in accordance with that System for the employee, the approval or certification of the agreement is not to be taken to result in a reduction of the employee's wages.

Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision dated 10 October 1994 (print L5723).

#### **170XC Special case—employee undertaking approved traineeship**

- (1) If an agreement provides for the payment of wages to an employee undertaking an approved traineeship at a rate that is not less than the appropriate percentage of the rate (**benchmark rate**) that would be applicable to the employee under the relevant award or designated award (as the case may be) if:
  - (a) that award applied to him or her; and
  - (b) he or she were not undertaking the traineeship;



the approval or certification of the agreement is not to be taken to result in a reduction of the employee's wages.

- (2) For the purposes of subsection (1), the *appropriate percentage of the benchmark rate* is such percentage of that rate as is determined in writing by the approving authority having regard to the reduction in the productive time of an employee undertaking the approved traineeship due to time spent in training.
- (3) If the agreement adopts, as the qualification for a wage level, a criterion determined by the approving authority instead of the criterion applying under the relevant award or designated award (as the case may be), that award is taken, for the purposes of this section, to have effect as if the criterion determined by the approving authority were substituted for the last-mentioned criterion.

#### **170XD Special case—employee undertaking approved apprenticeship**

- (1) This section applies if:
  - (a) an agreement provides for the payment of wages to an employee undertaking an approved apprenticeship in a particular trade, occupation or kind of work; and
  - (b) there is a relevant award or designated award regulating the payment of wages to employees undertaking an apprenticeship (*benchmark apprenticeship*) in the same trade, occupation or kind of work.
- (2) The approval or certification of the agreement is to be taken to result in a reduction of the employee's wages only if the agreement provides for the payment of wages to employees undertaking the approved apprenticeship at a rate that is less than the rate applicable under the relevant award or designated award (as the case may be) to employees undertaking the benchmark apprenticeship adjusted (if necessary) as provided in subsection (3).
- (3) For the purposes of subsection (2), the rate that is applicable to an employee undertaking the benchmark apprenticeship is to be adjusted to take into account the proportionate difference, as determined by the approving authority, between the productive time of an employee under the approved apprenticeship and the productive time of an employee under the benchmark apprenticeship.
- (4) If the agreement adopts, as the qualification for a wage level, a criterion determined by the approving authority instead of the criterion applying under the relevant award or designated award (as the case may be), that award is taken, for the purposes of this section, to have effect as if the criterion determined by the approving authority were substituted for the last-mentioned criterion.

**170XE Determination of designated award or awards for the purposes of an AWA**

- (1) If:
- (a) an employer proposes to make an AWA 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).
- (2) Upon application, the Employment Advocate must determine, and inform the employer in writing, that an award or awards (being 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 AWA) are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

**170XF Determination of designated award or awards for the purposes of a certified agreement**

- (1) If:
- (a) an employer or organisation of employees proposes to make a certified agreement; and
  - (b) there is no relevant award in relation to some or all of the persons to whom the agreement will apply;
- the employer or organisation may apply in writing to the Commission for the making of a determination under subsection (2).
- (2) Upon application, the Commission must determine, and inform the employer or organisation in writing, that an award or awards (being an award or awards under this Act regulating terms or conditions of employment of persons engaged in the same kind of work as that of those persons under the agreement) are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

**2 At the end of paragraphs 359(2)(a) to (e)**

Add “and”.

**3 After paragraph 359(2)(f)**

Insert:

- (fa) the delegation, by an approving authority that is a State or Territory training authority, of any of its functions and powers under Part VI; and
- (147) Schedule 14, item 5, page 177 (after line 20), after subsection (2), insert:
- (2A) The Commission must hear and determine an application for an order under this section as quickly as practicable.
- (148) Schedule 14, item 7, page 178 (line 8), omit “**166, 166A and 167**”, substitute “**and 166**”.
- (149) Schedule 14, page 178 (after line 9), after item 7, insert:

**7A At the end of subsection 166A(2)**

Add:

- ; or (d) conduct that is in breach of a direction given by the Commission or a State industrial authority.

**7B At the end of section 166A**

Add:

(7) If:

- (a) the conduct stops before the end of the 72 hours referred to in paragraph (6)(c); and
- (b) after the conduct stopped, other conduct occurred; and
- (c) in the Commission's opinion, the other conduct is substantially related to the first-mentioned conduct;

then, for the purposes of paragraph (6)(c):

- (d) the other conduct is taken to be part of the first-mentioned conduct; and
- (e) the period of the first-mentioned conduct is taken to include the period of the other conduct.

**7C Section 167**

Repeal the section.

- (150) Schedule 15, item 1, page 183 (lines 7 and 8), omit the definition of *enterprise branch*, substitute:

*enterprise association* means an association referred to in paragraph 188(1)(c).

- (151) Schedule 15, page 183 (after line 8), after item 1, insert:

**1A Subsection 134(3)**

After "person", insert ", who is not an officer or employee of an organisation,".

- (152) Schedule 15, page 183 (after line 12), after item 3, insert:

**3A Before section 188**

Insert:

**187B Interpretation**

In this Division, unless the contrary intention appears:

*enterprise* means:

- (a) a business that is carried on by a single employer; or
- (b) an operationally distinct part of such a business; or
- (c) 2 or more operationally distinct parts of the same business carried on by the same employer.

- (153) Schedule 15, item 4, page 183 (lines 13 and 14), omit the item.

- (154) Schedule 15, page 183 (after line 14), after item 4, insert:

**4A At the end of subsection 188(1)**

Add:

- ; (c) an association of which some or all of the members are employees performing work in the same enterprise and the other members (if any) are:
  - (i) officers of the association; or
  - (ii) persons specified in Schedule 3; or
  - (iii) independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the association.

**4B Subsection 188(2)**

Omit “or (b)(ii) or (iii)”, substitute “, (b)(ii) or (iii) or (c)(ii) or (iii)”.

**4C Subsection 189(1)**

After “association” (first occurring), insert “(other than an enterprise association)”.

- (155) Schedule 15, item 6, page 183 (lines 21 and 22), omit the item, substitute:

**6 Paragraphs 189(1)(b) and (c)**

Omit “100”, substitute “50”.

- (156) Schedule 15, items 9 and 10, page 184 (lines 3 to 6), omit the items, substitute:

**9 Paragraph 189(1)(j)**

Repeal the paragraph, substitute:

- (j) subject to subsection (1A), there is no organisation to which members of the association might belong, or, if there is such an organisation, it is not an organisation:
  - (i) to which the members of the association could more conveniently belong; and
  - (ii) that would more effectively represent those members.

- (157) Schedule 15, item 11, page 184 (before line 9), before subsection (2), insert:

(1A) If:

- (a) there is an organisation to which the members of the association might belong; and
- (b) the members of the association could more conveniently belong to the organisation; and
- (c) the organisation would more effectively represent those members than the association would;

the requirements of paragraph (1)(j) are taken to have been met if the designated Presidential Member accepts an undertaking from the association that the designated Presidential Member considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of the organisation and the eligibility rules of the association.

- (1B) Without limiting the matters that the designated Presidential Member may take into account in considering, under subparagraph (1)(j)(ii), the effectiveness of the representation of an organisation or association, the designated Presidential Member must take into account whether the representation would be consistent with the objects of this Act.
- (1C) A designated Presidential Member shall grant an application for registration made by an enterprise association that, under section 188, may apply for registration as an organisation if, and only if:
  - (a) the association:
    - (i) is a genuine association of a kind referred to in paragraph 188(1)(c); and
    - (ii) is an association for furthering or protecting the interests of its members; and
  - (b) the association is free from control by, or improper influence from:
    - (i) any employer, whether at the enterprise in question or otherwise; or
    - (ii) any person or body with an interest in that enterprise; or
    - (iii) any organisation, or any other association of employers or employees; and
  - (c) the association has at least 50 members who are employees; and
  - (d) the designated Presidential Member is satisfied that the association would conduct its affairs in a way that meets the obligations of an organisation under this Act; and
  - (e) the rules of the association make provision as required by this Act to be made by the rules of organisations; and
  - (f) the association does not have the same name as that of an organisation or a name that is so similar to the name of an organisation as to be likely to cause confusion; and
  - (g) the designated Presidential Member is satisfied that a majority of the persons eligible to be members of the association support its registration as an organisation; and
  - (h) a majority of the members present at a general meeting of the association, or an absolute majority of the committee of

management of the association, have passed, under the rules of the association, a resolution in favour of registration of the association as an organisation; and

- (i) the registration of the association would further the objects of this Act.
- (158) Schedule 15, item 11, page 184 (line 9), omit “paragraph (1)(d)”, substitute “paragraph (1)(d) or (1C)(d)”.
- (159) Schedule 15, items 13 and 14, page 184 (line 16) to page 185 (line 15), omit the items.
- (160) Schedule 15, page 185 (after line 15), before item 15, insert:

**14A After section 203**

Insert:

**203A Designated Presidential Member may determine alteration of rules where there has been a breach of an undertaking**

(1) If:

- (a) in the course of an organisation being registered under section 189, an undertaking was given under subsection 189(1A) to avoid demarcation disputes that might otherwise arise from an overlap between its eligibility rules and the eligibility rules of another organisation; and
- (b) the first-mentioned organisation has breached the undertaking;

a designated Presidential Member may, by instrument, determine such alterations of the rules of the organisation as are, in the Presidential Member’s opinion, necessary to remove the overlap.

- (2) The designated Presidential Member must give the organisation and the other organisation an opportunity, as prescribed, to be heard on the matter.
  - (3) Alterations determined under subsection (1) take effect on the date of the instrument.
- (161) Schedule 15, item 15, page 185 (lines 16 and 17), omit the item, substitute:

**15 Subsection 204(4)**

Omit “another organisation to which those persons might conveniently belong”, substitute “another organisation:

- (a) to which those persons might more conveniently belong; and
- (b) that would more effectively represent those members.”.

**15A Subsections 204(5) and (6)**

Repeal the subsections, substitute:

- (5) However, subsection (4) does not apply if the designated Presidential Member accepts an undertaking from the organisation

seeking the alteration that the designated Presidential Member considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of that organisation and the eligibility rules of the other organisation.

**15B Subsection 204(9)**

Repeal the subsection.

(162) Schedule 15, item 16, page 185 (line 18) to page 190 (line 8), omit the item.

(163) Schedule 15, page 198 (after line 8), after item 20, insert:

**20A After section 264**

Insert:

**264A Recovery of arrears**

- (1) Legal proceedings for the recovery of an amount payable by a person in relation to the person's membership of an organisation must not be commenced after the end of the period of 12 months starting on the day on which the amount became payable.
- (2) The amount ceases to be payable at the end of the period if legal proceedings to recover the amount have not been commenced by then.
- (3) Subsections (1) and (2) apply only to amounts that become payable on or after the commencement of those subsections.

(164) Schedule 15, item 28, page 200 (line 29) to page 203 (line 33), omit the item, substitute:

**28 After Division 11 of Part IX**

Insert:

**Division 11A—Entry and inspection of premises etc. by organisations**

**285A Permits**

- (1) A Registrar may, on application by an organisation in accordance with the regulations, issue to an officer or employee of the organisation a permit in the form prescribed for the purposes of this section.
- (2) The permit:
  - (a) remains in force until it expires or is revoked under this section; and
  - (b) expires at the earlier of:
    - (i) 3 years after the day on which it was issued; or
    - (ii) the time at which the person to whom it was issued ceases to be an officer or employee of the organisation concerned.

- (3) A Registrar may, on application in accordance with the regulations, revoke the permit if he or she is satisfied that the person to whom it was issued has, in exercising powers under this Division, intentionally hindered or obstructed any employer or employee or otherwise acted in an improper manner.
- (4) An application for the revocation of a permit must set out the grounds on which the application is made.
- (5) A person to whom a permit has been issued under this section must, within 14 days after the expiry or revocation of the permit, return the permit to the Registrar.
- (6) If one or more permits issued to a person under this section have been revoked, the Registrar must take the fact into account when deciding whether to issue a further permit under this section to the person.

**285B Investigating suspected breaches of Act etc.**

- (1) This section applies if a person who holds a permit in force under this Division suspects that a breach has occurred, or is occurring, of:
  - (a) this Act; or
  - (b) an award, an order of the Commission, or a certified agreement, that is in force and binds the organisation of which the person is an officer or employee.
- (2) For the purpose of investigating the suspected breach, the person may enter, during working hours, any premises where employees work who are members of the organisation of which the person is an officer or employee.
- (3) After entering the premises, the person may, for the purpose of investigating the suspected breach:
  - (a) require the employer of the employees to allow the person, during working hours, to inspect and, if the person wishes, to make copies of any of the following that are kept by the employer on the premises and are relevant to the suspected breach:
    - (i) any time sheets; or
    - (ii) any pay sheets; or
    - (iii) any other documents, other than an AWA, an ancillary document or a document that shows some or all of the content of an AWA or of an ancillary document; and
  - (b) during working hours, inspect or view any work, material, machinery, or appliance, that is relevant to the suspected breach; and
  - (c) during working hours, interview any employees who are:



- (i) members of the organisation of which the person is an officer or employee; or
  - (ii) eligible to become members of that organisation;
- about the suspected breach.
- (4) For the purpose of investigating the suspected breach, the person may (regardless of whether the person exercises powers under subsection (2) or (3)) require the employer of the employees mentioned in subsection (2):
- (a) to produce documents of the kind mentioned in any of subparagraphs (3)(a)(i) to (iii) at the premises at which the employees work or at some other agreed place; and
  - (b) if the documents are to be produced at the premises at which the employees work—to allow the person, during working hours, to enter the premises and:
    - (i) inspect the documents; and
    - (ii) if the person wishes to do so—make copies of the documents; and
  - (c) if the documents are to be produced at some other place—to allow the person, at an agreed time, to inspect the documents at that place and, if the person wishes to do so, to make copies of them.

### **285C Discussions with employees**

- (1) A person who holds a permit in force under this Division may enter premises in which:
- (a) work is being carried on to which an award applies that is binding on the organisation of which the person holding the permit is an officer or employee; and
  - (b) employees who are members, or eligible to become members, of that organisation work;
- for the purposes of holding discussions with any of those employees who wish to participate in those discussions.
- (2) The person may only enter the premises during working hours and may only hold the discussions during the employees' meal-time or other breaks.

### **285D Conduct not authorised under sections 285B and 285C**

- (1) If:
- (a) a person proposes to enter, or is on, premises in accordance with section 285B or 285C; and
  - (b) the occupier of the premises requires the person to show his or her permit;
- the person is not entitled under that section to enter or remain on the premises unless he or she shows the occupier the permit.

- (2) A person is only entitled to enter premises, and exercise powers, under section 285B or 285C if the person has given the occupier of the premises at least 24 hours' notice of the person's intention to do so.
- (3) A person is not, in exercising any powers under section 285B or 285C, entitled to enter any part of premises used for residential purposes, except with the permission of the occupier.

**285E Conduct in relation to sections 285B and 285C attracting civil penalties**

- (1) A person exercising powers under section 285B or 285C must not intentionally hinder or obstruct any employer or employee.
- (2) The occupier of premises must not refuse or unduly delay entry to the premises by a person entitled to enter the premises under section 285B or 285C.
- (3) An employer must not refuse or fail to comply with a requirement under paragraph 285B(3)(a) or subsection 285B(4).
- (4) A person must not otherwise intentionally hinder or obstruct a person exercising powers under section 285B or 285C. To avoid doubt, a failure to agree on a place or a time as mentioned in paragraph 285B(4)(a) or (c) does not constitute hindering or obstructing a person exercising such powers.

**285F Civil penalties**

- (1) In this section:

*eligible court* means:

- (a) the Federal Court of Australia; or
- (b) a District, County or Local Court; or
- (c) a magistrate's court.

*penalty provision* means subsection 285A(5) or 285E(1), (2), (3) or (4).

- (2) If a person contravenes a penalty provision, the contravention is not an offence. However, an eligible court may make an order imposing a penalty on a person who contravenes a penalty provision.
- (3) The penalty cannot be more than \$10,000 for a body corporate or \$2,000 in other cases.
- (4) An application for an order under subsection (2) may be made by any person.
- (5) An eligible court may grant an injunction requiring a person not to contravene, or to cease contravening, a penalty provision.

**285G Powers of Commission**

- (1) In spite of section 89A, the Commission may exercise its powers under Part VI of this Act to prevent and settle industrial disputes about the operation of this Division, but must not make an order for

that purpose conferring powers that are additional to, or inconsistent with, powers exercisable under this Division.

- (2) However the Commission does have power, for the purpose of preventing or settling the industrial dispute, to revoke a permit issued to a person under section 285A. If it does so, it may make any order that it considers appropriate, for the purpose of preventing or settling the industrial dispute, about the issue of any further permit to the person, or of any permit or further permit to any other person, under that section.

### **28A Section 286**

Repeal the section.

(165) Schedule 15, item 29, page 204 (lines 1 and 2), omit the item, substitute:

### **29 At the end of paragraph 296(b)**

Add:

- or (iii) is not free from control by, or improper influence from, a person or body referred to in paragraph 189(1)(aa) or (1C)(b), as the case requires; or
- (iv) subject to subsection (5), if the organisation is an enterprise association—the enterprise to which it relates has ceased to exist;

### **29A Subparagraph 296(c)(ii)**

Omit “100”, substitute “50”.

### **29B At the end of section 296**

Add:

- (2) A designated Presidential Member may also cancel the registration of an organisation if:
  - (a) the designated Presidential Member is satisfied that the organisation has breached an undertaking referred to in subsection 189(1A); and
  - (b) the designated Presidential Member does not consider it appropriate to amend the eligibility rules of the organisation under section 203A.
- (3) A cancellation under subsection (2) may be made:
  - (a) on application by an organisation or person interested; or
  - (b) on application by the Minister; or
  - (c) on the designated Presidential Member’s own motion.
- (4) For the purposes of subparagraph (1)(b)(iv), the enterprise to which an organisation relates has ceased to exist if:
  - (a) in the case of an organisation that relates only to an operationally distinct part or parts of the business that constitutes the enterprise—that part or those parts have

ceased to exist, or the whole of the business has ceased to exist; or

- (b) in the case of an organisation that relates to the whole of the business that constitutes the enterprise—the whole of the business has ceased to exist.

(5) Subparagraph (1)(b)(iv) does not apply if:

- (a) some or all of the business of the enterprise in question is now conducted by another enterprise; and
- (b) all the alterations that are necessary to enable the organisation to operate as an enterprise association in relation to the other enterprise have been made; and
- (c) the designated Presidential Member is satisfied that the organisation still meets the requirements of subsection 189(1C).

The Presidential Member must give the organisation a reasonable opportunity to alter its rules as provided in paragraph (b) before the designated Presidential Member considers cancelling the registration of the organisation on the ground referred to in subparagraph (1)(b)(iv).

(166) Schedule 15, item 30, page 204 (lines 3 and 4), omit the item, substitute:

**30 Paragraph 306(a)**

Omit “or 286(1)”.

**30A Paragraph 306(b)**

Omit “or 286(1)”, substitute “or section 285B or 285C”.

(167) Schedule 18, item 1, page 251 (line 33) to page 252 (line 6), omit subsection (1), substitute:

- (1) A person must not, in concert with another person, engage in conduct for the purpose, and having or likely to have the effect, of preventing or substantially hindering a third person (who is not an employer of the first person) from engaging in trade or commerce involving the movement of goods between Australia and places outside Australia.

(168) Schedule 18, item 1, page 255 (after line 10), after subsection (2), insert:

*Dominant purpose of conduct relates to environmental protection or consumer protection*

- (2A) A person does not contravene, and is not involved in a contravention of, subsection 45D(1), 45DA(1) or 45DB(1) by engaging in conduct if:
  - (a) the dominant purpose for which the conduct is engaged in is substantially related to environmental protection or consumer protection; and
  - (b) engaging in the conduct is not industrial action.

- Note 1: If an environmental organisation or a consumer organisation is a body corporate:
- (a) it is a “person” who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption; and
  - (b) each of its members is a “person” who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption.
- Note 2: If an environmental organisation or a consumer organisation is not a body corporate:
- (a) it is not a “person” and is therefore not subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) (consequently, this exemption does not cover the organisation as such); but
  - (b) each of its members is a “person” who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption.

*Meaning of industrial action—basic definition*

(2B) In subsection (2A), **industrial action** means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:
  - (i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial instrument or an order of an industrial body; or
  - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
- (b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or
- (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or
- (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work.

For this purpose, **industrial body**, **industrial dispute** and **industrial instrument** have the meanings given by subsection 298B(1) of the *Workplace Relations Act 1996*.

*Meaning of industrial action—further clarification*

(2C) For the purposes of subsection (2A):

- (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and
- (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

(169) Schedule 18, item 1, page 255 (line 13), omit “or (2)”, substitute “, (2) or (2A)”.

Note about Schedule 18, item 1: The heading to subsection 45DD(3) (page 255, line 11) is replaced by the heading “*Subsections (1), (2) and (2A) do not protect people not covered by them*”.

(170) Schedule 18, page 260 (after line 6), after item 2, insert:

**2A At the end of subsection 76(1)**

Add:

Note: Section 87AA provides that, if boycott conduct is involved in proceedings, the Court must have regard to certain matters in exercising its powers under this Part. (*Boycott conduct* is defined in subsection 87AA(2).)

(171) Schedule 18, page 260 (after line 26), after item 5, insert:

**5A At the end of subsection 80(1)**

Add:

Note: Section 87AA provides that, if boycott conduct is involved in proceedings, the Court must have regard to certain matters in exercising its powers under this Part. (*Boycott conduct* is defined in subsection 87AA(2).)

(172) Schedule 18, page 262 (after line 25), after item 6, insert:

**6A After section 87A**

Insert:

**87AA Special provision relating to Court’s exercise of powers under this Part in relation to boycott conduct**

- (1) In exercising its powers in proceedings under this Part in relation to boycott conduct, the Court is to have regard to any action the applicant in the proceedings has taken, or could take, before an industrial authority in relation to the boycott conduct. In particular, the Court is to have regard to any application for conciliation that the applicant has made or could make.
- (2) In this section:

*boycott conduct* means conduct that constitutes or would constitute:

- (a) a contravention of subsection 45D(1), 45DA(1), 45DB(1), 45E(2) or 45E(3) or section 45EA; or
- (b) attempting to contravene one of those provisions; or
- (c) aiding, abetting, counselling or procuring a person to contravene one of those provisions; or

- (d) inducing, or attempting to induce, a person (whether by threats, promises or otherwise) to contravene one of those provisions; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of one of those provisions; or
- (f) conspiring with others to contravene one of those provisions.

***industrial authority*** means:

- (a) the Australian Industrial Relations Commission; or
- (b) a State industrial authority as defined in subsection 4(1) of the *Workplace Relations Act 1996*.

(173) Schedule 18, item 7, page 266 (after line 32), after subsection (2), insert:

*Dominant purpose of conduct relates to environmental protection or consumer protection*

- (2A) A person does not contravene, and is not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in conduct if:
- (a) the dominant purpose for which the conduct is engaged in is substantially related to environmental protection or consumer protection; and
  - (b) engaging in the conduct is not industrial action.

Note 1: If an environmental organisation or a consumer organisation is a body corporate:

- (a) it is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption; and
- (b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption.

Note 2: If an environmental organisation or a consumer organisation is not a body corporate:

- (a) it is not a "person" and is therefore not subject to the prohibitions in subsections 45D(1) and 45DA(1) (consequently, this exemption does not cover the organisation as such); but
- (b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption.

***Meaning of industrial action—basic definition***

(2B) In subsection (2A), ***industrial action*** means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:

- (i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial instrument or an order of an industrial body; or
  - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
- (b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or
  - (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or
  - (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work.

For this purpose, *industrial body*, *industrial dispute* and *industrial instrument* have the meanings given by subsection 298B(1) of the *Workplace Relations Act 1996*.

*Meaning of industrial action—further clarification*

(2C) For the purposes of subsection (2A):

- (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and
- (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

(174) Schedule 18, item 7, page 267 (line 2), omit “or (2)”, substitute “, (2) or (2A)”.

Note about Schedule 1, item 7: The heading to subsection 45DD(3) (page 266, line 33) is replaced by the heading “*Subsections (1), (2) and (2A) do not protect people not covered by them*”.

(175) Schedule 21, item 16, page 305 (lines 18 and 19), omit the item—

Mr Reith (Minister for Industrial Relations) moved—That the amendments be agreed to.

Debate ensued.

*Allotment of time:* Mr Reith moved—That the time allotted for consideration of the Senate’s amendments be until 11.15 a.m. this day.

Debate ensued.

Question—put and passed.

Debate continued on the question—That the amendments be agreed to.

*Limitation of debate:* At 11.15 a.m., the time allotted for consideration of the Senate’s amendments having expired—

Question—put.



The House divided (the Deputy Speaker, Mr Nehl, in the Chair)—

AYES, 82

Mr Abbott	Mrs Elson	Mr Lieberman	Mr Slipper
Mr J. N. Andrew	Mr Entsch	Mr Lindsay	Mr A. C. Smith
Mr K. J. Andrews	Mr R. D. C. Evans	Mr Lloyd	Mr W. L. Smith
Mr Anthony	Mr Filing	Mr McArthur*	Mr Somlyay
Mrs Bailey	Mrs Gallus	Mr McDougall	Dr Southcott
Mr R. C. Baldwin	Ms Gambaro	Mr McLachlan	Mrs Stone
Mr Barresi	Mrs Gash	Mr Marek	Mrs Sullivan
Mr Bartlett	Mr Georgiou	Mr Miles	Mr Taylor
Mr Billson	Mrs E. J. Grace	Mr Moore	Mr A. P. Thomson
Mrs Bishop	Ms Hanson	Mrs Moylan	Mr Truss
Mr Bradford	Mr Hardgrave	Mr Mutch	Mr Tuckey
Mr Broadbent	Mr Hawker	Dr Nelson	Mr M. A. J. Vaile
Mr Brough	Mr Hicks*	Mr Nugent	Ms D. S. Vale
Mr Cadman	Mr Hockey	Mr Prosser	Mr Wakelin
Mr E. H. Cameron	Ms Jeanes	Mr Randall	Mrs West
Mr R. A. Cameron	Mrs Johnston	Mr Reith	Mr Williams
Mr Causley	Mr Jull	Mr Rocher	Dr Wooldridge
Mr Charles	Mr Katter	Mr Ronaldson	Ms Worth
Mr Cobb	Mrs D. M. Kelly	Mr Scott	Mr Zammit
Mr Dondas	Miss J. M. Kelly	Mr Sharp	
Mrs Draper	Dr Kemp	Mr Sinclair	

NOES, 44

Mr Adams	Mr M. J. Ferguson	Mr Latham	Mr Mossfield
Mr Albanese	Mr Fitzgibbon	Dr Lawrence	Mr O'Connor
Mr P. J. Baldwin	Mr E. L. Grace*	Mr Lee	Mr O'Keefe
Mr Beddall	Mr Griffin	Mr McClelland	Mr Price
Mr Bevis	Mr Hatton	Ms Macklin	Mr Quick
Mr Brereton	Mr Holding	Mr McLeay	Mr Sawford*
Mr Brown	Mr Hollis	Mr McMullan	Mr Sercombe
Mr Crean	Mr Jenkins	Mr Martin	Mr Tanner
Ms Ellis	Mr Jones	Mr Melham	Dr Theophanous
Mr G. J. Evans	Mr Kerr	Mr A. A. Morris	Mr K. J. Thomson
Mr L. D. T. Ferguson	Mr Langmore	Mr P. F. Morris	Mr Wilton

\* Tellers

And so it was resolved in the affirmative.

7 PAYMENT OF TAX RECEIPTS (VICTORIA) BILL 1996

Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister), for Mr Costello (Treasurer), pursuant to notice, presented a Bill for an Act authorising the payment of certain amounts that the Commonwealth has undertaken to pay under a deed of agreement with Victoria, and for related purposes.

Bill read a first time.

Mr Miles moved—That the Bill be now read a second time.

*Paper:* Mr Miles presented an explanatory memorandum to the Bill.

Debate, by leave, ensued.

Question—put and passed—Bill read a second time.

*Message from the Governor-General:* Message No. 64, dated 20 November 1996, from His Excellency the Governor-General was announced recommending an appropriation for the purposes of the Bill.

Leave granted for third reading to be moved forthwith.

On the motion of Mr Miles, the Bill was read a third time.

8 MESSAGE FROM THE SENATE—INCOME TAX RATES AMENDMENT (FAMILY TAX INITIATIVE) BILL 1996

The following message from the Senate was reported:

Message No. 93

Mr Speaker

The Senate returns to the House of Representatives the bill for **An Act to amend the *Income Tax Rates Act 1986* for the purposes of a family tax initiative, and for related purposes**, and acquaints the House that the Senate has agreed to the bill with the amendments indicated by the annexed schedule, in which amendments the Senate requests the concurrence of the House of Representatives.

MARGARET REID

President

The Senate

20 November 1996

*Constitutional significance of Senate amendments—Statement by Deputy Speaker*

The Deputy Speaker made the following statement:

It is my duty to make a short statement to the House concerning the Senate proposals with respect to this Bill.

Senate amendment No. (2) appears to have the effect of making a reduction in the number of taxpayers who will obtain the benefit of the increase in the tax-free threshold which is central to the family tax assistance initiatives. If enacted, it could therefore have the effect of not decreasing, in some instances, the taxable income of some taxpayers to the extent provided for in the Bill as introduced. Senate amendment No. (1) appears to be consequential to amendment No. (2).

There is significant doubt as to whether the Senate may proceed in such instance by way of amendment. This is because of the third paragraph of section 53 of the Constitution, which provides that the Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The overriding consideration, in my view, is the matter of principle, and respect for, and regard to, the terms of the Constitution.

I acknowledge that, in the circumstances, it will be difficult for the House to reach a conclusive understanding of the matter. I note however that both Houses now have the benefit of committee reports concerning the third paragraph of

section 53 of the Constitution. It will also be difficult for any satisfactory dialogue to take place between the Houses on the specific matter of the purported amendments to this Bill.

Nevertheless, I understand that the proposals to which I have referred were originally drafted as requests for amendments. I would ask that Ministers in the Senate, when provided with advice from those who drafted the legislation that the appropriate course to follow is by way of request for amendment, satisfy themselves as to the adherence to Constitutional principles before deviating from that course.

I believe that it is my duty to draw these matters to the attention of Members before any further consideration is given to the Senate's proposals.

Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister) moved—  
That:

- (1) the House endorses the statement of the Deputy Speaker in relation to the constitutional questions raised by message No. 93 transmitted by the Senate in relation to the Income Tax Rates Amendment (Family Tax Initiative) Bill 1996;
- (2) the House, having regard to the fact that the public interest demands the early enactment of the legislation, refrains from the determination of its constitutional rights in respect of Senate message No. 93; and
- (3) the amendments be considered forthwith.

Debate ensued.

Question—put and passed.

#### SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

- (1) Schedule 1, item 2, page 4 (after line 8), after the definition of *spouse*, insert:
 

*taxable income*, in relation to a beneficiary of a trust estate, includes (except in section 20J) any amount that would have been included in the beneficiary's assessable income under section 100 of the Assessment Act if paragraph 100(1)(b), and the words "or of each of the trust estates" in paragraphs 100(1)(c) and (d), of that Act were omitted.
- (2) Schedule 1, item 2, page 13 (after line 11), at the end of section 20J, add:
  - (2) For the purpose of determining whether section 20C or 20D applies, or would apart from section 20E apply, to the beneficiary, the beneficiary's taxable income is taken to be the beneficiary's share of the net income of the trust estate in respect of which the trustee is liable to be assessed and to pay tax under section 98 of the Assessment Act.
- (3) Schedule 1, item 2, page 21 (line 26), omit "at the end of", substitute "after".
- (4) Schedule 1, item 2, page 27 (after line 19), after section 20U, insert:

**20V Quotation of spouse's tax file number**

- (1) A taxpayer's spouse may tell the taxpayer the spouse's tax file number for the purposes of this Division.
- (2) A taxpayer may, but is not obliged to, quote the spouse's tax file number for the purposes of this Division.

Mr Miles moved—That amendment (1) be agreed to.

Debate ensued.

Mr Price rising to address the House—

*Closure:* Mr Miles moved—That the question be now put.

Question—That the question be now put—put.

The House divided (the Deputy Speaker, Mr Adams, in the Chair)—

AYES, 87

Mr Abbott	Mrs Elson	Dr Kemp	Mr Sharp
Mr J. N. Andrew	Mr Entsch	Mr Lieberman	Mr Sinclair
Mr K. J. Andrews	Mr R. D. C. Evans	Mr Lindsay	Mr Slipper
Mr Anthony	Mr Fahey	Mr Lloyd	Mr A. C. Smith
Mrs Bailey	Mr Filing	Mr McArthur*	Mr W. L. Smith
Mr R. C. Baldwin	Mr Forrest	Mr McDougall	Mr Somlyay
Mr Barresi	Mrs Gallus	Mr McGauran	Dr Southcott
Mr Bartlett	Ms Gambaro	Mr McLachlan	Mrs Stone
Mr Billson	Mrs Gash	Mr Marek	Mrs Sullivan
Mrs Bishop	Mr Georgiou	Mr Miles	Mr Taylor
Mr Bradford	Mrs E. J. Grace	Mr Moore	Mr A. P. Thomson
Mr Broadbent	Ms Hanson	Mrs Moylan	Mr Truss
Mr Brough	Mr Hardgrave	Mr Mutch	Mr Tuckey
Mr Cadman	Mr Hawker	Mr Nehl	Mr M. A. J. Vaile
Mr E. H. Cameron	Mr Hicks*	Dr Nelson	Ms D. S. Vale
Mr R. A. Cameron	Mr Hockey	Mr Nugent	Mr Wakelin
Mr Causley	Ms Jeanes	Mr Prosser	Mrs West
Mr Charles	Mrs Johnston	Mr Randall	Mr Williams
Mr Cobb	Mr Jull	Mr Reith	Dr Wooldridge
Mr Costello	Mr Katter	Mr Ronaldson	Ms Worth
Mr Dondas	Mrs D. M. Kelly	Mr Ruddock	Mr Zammit
Mr Draper	Miss J. M. Kelly	Mr Scott	

NOES, 41

Mr Albanese	Mr E. L. Grace*	Mr Lee	Mr Price
Mr Beddall	Mr Griffin	Mr McClelland	Mr Quick
Mr Bevis	Mr Hatton	Ms Macklin	Mr Sawford*
Mr Brereton	Mr Holding	Mr McLeay	Mr Sercombe
Mr Brown	Mr Hollis	Mr McMullan	Mr Tanner
Mr Crean	Mr Jenkins	Mr Martin	Dr Theophanous
Ms Ellis	Mr Jones	Mr Melham	Mr K. J. Thomson
Mr G. J. Evans	Mr Kerr	Mr A. A. Morris	Mr Wilton
Mr L. D. T. Ferguson	Mr Langmore	Mr P. F. Morris	
Mr M. J. Ferguson	Mr Latham	Mr Mossfield	
Mr Fitzgibbon	Dr Lawrence	Mr O'Keefe	

\* Tellers

And so it was resolved in the affirmative.

And the question—That amendment (1) be agreed to—being accordingly put—

The House divided (the Deputy Speaker, Mr Adams, in the Chair)—

AYES, 87

Mr Abbott	Mrs Elson	Dr Kemp	Mr Sharp
Mr J. N. Andrew	Mr Entsch	Mr Lieberman	Mr Sinclair
Mr K. J. Andrews	Mr R. D. C. Evans	Mr Lindsay	Mr Slipper
Mr Anthony	Mr Fahey	Mr Lloyd	Mr A. C. Smith
Mrs Bailey	Mr Filing	Mr McArthur*	Mr W. L. Smith
Mr R. C. Baldwin	Mr Forrest	Mr McDougall	Mr Somlyay
Mr Barresi	Mrs Gallus	Mr McGauran	Dr Southcott
Mr Bartlett	Ms Gambaro	Mr McLachlan	Mrs Stone
Mr Billson	Mrs Gash	Mr Marek	Mrs Sullivan
Mrs Bishop	Mr Georgiou	Mr Miles	Mr Taylor
Mr Bradford	Mrs E. J. Grace	Mr Moore	Mr A. P. Thomson
Mr Broadbent	Ms Hanson	Mrs Moylan	Mr Truss
Mr Brough	Mr Hardgrave	Mr Mutch	Mr Tuckey
Mr Cadman	Mr Hawker	Mr Nehl	Mr M. A. J. Vaile
Mr E. H. Cameron	Mr Hicks*	Dr Nelson	Ms D. S. Vale
Mr R. A. Cameron	Mr Hockey	Mr Nugent	Mr Wakelin
Mr Causley	Ms Jeanes	Mr Prosser	Mrs West
Mr Charles	Mrs Johnston	Mr Randall	Mr Williams
Mr Cobb	Mr Jull	Mr Reith	Dr Wooldridge
Mr Costello	Mr Katter	Mr Ronaldson	Ms Worth
Mr Dondas	Mrs D. M. Kelly	Mr Ruddock	Mr Zammit
Mrs Draper	Miss J. M. Kelly	Mr Scott	

NOES, 41

Mr Albanese	Mr E. L. Grace*	Mr Lee	Mr Price
Mr Beddall	Mr Griffin	Mr McClelland	Mr Quick
Mr Bevis	Mr Hatton	Ms Macklin	Mr Sawford*
Mr Brereton	Mr Holding	Mr McLeay	Mr Sercombe
Mr Brown	Mr Hollis	Mr McMullan	Mr Tanner
Mr Crean	Mr Jenkins	Mr Martin	Dr Theophanous
Ms Ellis	Mr Jones	Mr Melham	Mr K. J. Thomson
Mr G. J. Evans	Mr Kerr	Mr A. A. Morris	Mr Wilton
Mr L. D. T. Ferguson	Mr Langmore	Mr P. F. Morris	
Mr M. J. Ferguson	Mr Latham	Mr Mossfield	
Mr Fitzgibbon	Dr Lawrence	Mr O'Keefe	

\* Tellers

And so it was resolved in the affirmative.

Mr Miles moved—That amendment (2) be agreed to.

Debate ensued.

Mr Price rising to address the House—

*Closure:* Mr Miles moved—That the question be now put.

Question—That the question be now put—put.

The House proceeding to a division—

The division not further proceeded with.

Motion—That the question be now put—withdrawn, by leave.

Debate continued.

Question—That amendment (2) be agreed to—put and passed.

On the motion of Mr Miles, amendment (3) was agreed to, after debate.

On the motion of Mr Miles, amendment (4) was agreed to, after debate.

#### 9 MESSAGE FROM THE SENATE—FAMILY (TAX INITIATIVE) BILL 1996

The following message from the Senate was reported:

Message No. 94

Mr Speaker

The Senate returns to the House of Representatives the bill for **An Act to provide for a family tax initiative, and for related purposes**, and acquaints the House that the Senate has agreed to the bill with the amendment indicated by the annexed schedule, in which amendment the Senate requests the concurrence of the House of Representatives.

MARGARET REID

President

The Senate

20 November 1996

Ordered—That the amendment be considered forthwith.

#### SCHEDULE OF THE AMENDMENT MADE BY THE SENATE

- (1) Schedule 2, item 2, page 6 (after line 19), after paragraph (c), insert:  
     (ca) point 1069-B7;

On the motion of Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister), the amendment was agreed to, after debate.

#### 10 CUSTOMS AMENDMENT BILL (NO. 2) 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

It being 2 p.m., the debate was interrupted in accordance with standing order 101A, and the resumption of the debate made an order of the day for a later hour this day.

#### 11 VISIT BY PRESIDENT AND MRS CLINTON—STATEMENT BY SPEAKER

The Speaker made a statement concerning the visit yesterday by President and Mrs Clinton and thanked all those involved for their efforts.

#### 12 QUESTIONS

Questions without notice were asked.

**13 AUDITOR-GENERAL'S REPORT—PUBLICATION OF PAPER**

The Speaker presented the following paper:

Audit Act—Auditor-General—Audit report No. 14 of 1996-97—Performance audit—Evaluation process for the Shared Systems Suite: Office of Government Information Technology.

Mr Reith (Leader of the House), by leave, moved—That:

- (1) this House authorises the publication of the Auditor-General's audit report No. 14 of 1996-97; and
- (2) the report be printed.

Question—put and passed.

**14 PAPERS**

The following papers were presented:

Australian Securities Commission Act—Companies Auditors and Liquidators Disciplinary Board—Report for 1995-96.

Australian Sports Drug Agency Act—Australian Sports Drug Agency—Operational plan 1996-97.

Complaints (Australian Federal Police) Act—Federal Police Disciplinary Tribunal—Report for 1995-96.

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Human rights and progress towards democracy in Burma (Myanmar), October 1995—Government response.

Nuclear Non-Proliferation (Safeguards) Act and Chemical Weapons (Prohibition) Act—Australian Safeguards Office and Chemical Weapons Convention Office—Report for 1995-96.

**15 AUSTRALIAN SPORTS DRUG AGENCY—REPORT—MOTION TO TAKE NOTE OF PAPER**

Mr Reith (Leader of the House) moved—That the House take note of the following paper:

Australian Sports Drug Agency Act—Australian Sports Drug Agency—Operational plan 1996-97.

Debate adjourned (Mr Crean), and the resumption of the debate made an order of the day for the next sitting.

**16 SPECIAL ADJOURNMENT**

Mr Reith (Leader of the House) moved—That the House, at its rising, adjourn until Monday, 2 December 1996, at 12.30 p.m., unless the Speaker fixes an alternative day or hour of meeting.

Debate ensued.

The debate having been closed by Mr Reith having spoken in reply—Mr Crean, by leave, addressed the House.

Mr Reith, by leave, again addressed the House.

Question—put and passed.

#### 17 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—HEALTH SYSTEM

The House was informed that Mr Lee had proposed that a definite matter of public importance be submitted to the House for discussion, namely, “The pain inflicted on the health of millions of Australians resulting from private health fund premiums rising by up to 15%, massive cuts to public hospital funding as a result of the Howard Government’s first Budget and further disruption caused by the Government’s retrospective actions on Medicare provider numbers”.

The proposed discussion having received the necessary support—

Mr Lee addressed the House.

Discussion ensued.

Discussion concluded.

#### 18 MESSAGES FROM THE GOVERNOR-GENERAL—ASSENT TO BILLS

Messages from His Excellency the Governor-General were announced informing the House that His Excellency, in the name of Her Majesty, had assented to the following Bills:

20 November 1996—Message—

No. 62—CFM Sale 1996.

No. 63—Social Security Legislation Amendment (No. 1) 1996.

#### 19 MESSAGES FROM THE SENATE

Messages from the Senate were reported:

(a) acquainting the House of the following resolution agreed to by the Senate:

That, following its report to be presented on 18 November 1996, the proposed changes to the *Native Title Act 1993* contained in both the Native Title Amendment Bill 1996 and the exposure draft continue to stand referred to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund for a further report by 13 December 1996—Message No. 95, 19 November 1996; and

(b) returning the following Bill without amendment:

21 November 1996—Message No. 96—Wool International Amendment 1996.

#### 20 POSTPONEMENT OF ORDERS OF THE DAY

Ordered—That orders of the day Nos. 3 to 7, government business, be postponed until a later hour this day.

#### 21 LEAVE OF HOUSE FOR PRODUCTION OF RECORDS IN COURT PROCEEDINGS

Mrs Bishop (Minister for Defence Industry, Science and Personnel), for Mr Reith (Leader of the House), pursuant to notice, moved—That the House grants



leave for Arthur Robinson & Hedderwicks to produce the following records in evidence in proceedings before the High Court in the cases:

- (a) *Laurence Nathan Levy v. The State of Victoria & Others*; and
- (b) *Lange v. Australian Broadcasting Corporation*

Parliamentary Debates, House of Representatives, 15 November 1994—Speech of Mr Lavarch (pp. 3336-3342).

Question—put and passed.

## 22 CUSTOMS AMENDMENT BILL (NO. 2) 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

Question—put and passed—Bill read a second time.

Leave granted for third reading to be moved forthwith.

On the motion of Mr Prosser (Minister for Small Business and Consumer Affairs), the Bill was read a third time.

## 23 IMPORT PROCESSING CHARGES BILL 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Question—put and passed—Bill read a second time.

Leave granted for third reading to be moved forthwith.

On the motion of Mr Prosser (Minister for Small Business and Consumer Affairs), the Bill was read a third time.

## 24 CUSTOMS DEPOT LICENSING CHARGES BILL 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

Question—put and passed—Bill read a second time.

Leave granted for third reading to be moved forthwith.

On the motion of Mr Prosser (Minister for Small Business and Consumer Affairs), the Bill was read a third time.

## 25 ADJOURNMENT NEGATIVED

Mr Prosser (Minister for Small Business and Consumer Affairs) moved—That the House do now adjourn.

Question—put and negatived.

## 26 BANKRUPTCY AMENDMENT BILL 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

Debate adjourned (Mr Marek), and the resumption of the debate made an order of the day for the next sitting.

## 27 ADJOURNMENT

Mr Reith (Leader of the House) moved—That the House do now adjourn.

Mr Latham rising to address the House—

*Closure:* Mr Reith moved—That the question be now put.

Question—That the question be now put—put.

The House divided (the Deputy Speaker, Mr Hollis, in the Chair)—

### AYES, 81

Mr Abbott	Mr R. D. C. Evans	Mr McArthur*	Mr A. C. Smith
Mr J. N. Andrew	Mr Fahey	Mr McDougall	Mr W. L. Smith
Mr K. J. Andrews	Mrs Gallus	Mr McLachlan	Mr Somlyay
Mr Anthony	Ms Gambaro	Mr Marek	Dr Southcott
Mrs Bailey	Mrs Gash	Mr Miles	Mrs Stone
Mr R. C. Baldwin	Mr Georgiou	Mr Moore	Mrs Sullivan
Mr Barresi	Mrs E. J. Grace	Mrs Moylan	Mr Taylor
Mr Bartlett	Mr Hardgrave	Mr Mutch	Mr A. P. Thomson
Mr Billson	Mr Hawker	Mr Nairn	Mr Truss
Mrs Bishop	Mr Hicks*	Mr Nehl	Mr Tuckey
Mr Bradford	Mr Hockey	Dr Nelson	Mr M. A. J. Vaile
Mr Broadbent	Ms Jeanes	Mr Nugent	Ms D. S. Vale
Mr Brough	Mrs Johnston	Mr Prosser	Mr Wakelin
Mr Cadman	Mr Jull	Mr Randall	Mrs West
Mr E. H. Cameron	Mr Katter	Mr Reith	Mr Williams
Mr R. A. Cameron	Mrs D. M. Kelly	Mr Ronaldson	Dr Wooldridge
Mr Causley	Miss J. M. Kelly	Mr Ruddock	Ms Worth
Mr Charles	Dr Kemp	Mr Scott	Mr Zammit
Mr Cobb	Mr Lieberman	Mr Sharp	
Mrs Elson	Mr Lindsay	Mr Sinclair	
Mr Entsch	Mr Lloyd	Mr Slipper	

### NOES, 30

Mr Adams	Mr M. J. Evans	Mr Lee	Mr O'Connor
Mr Albanese	Mr M. J. Ferguson	Mr McClelland	Mr O'Keefe
Mr P. J. Baldwin	Mr Filing	Mr McLeay	Mr Price
Mr Beddall	Mr E. L. Grace*	Mr McMullan	Mr Sawford*
Mr Brown	Mr Hatton	Mr Martin	Mr Sercombe
Mr Crean	Mr Jenkins	Mr Melham	Mr Wilton
Ms Ellis	Mr Langmore	Mr A. A. Morris	
Mr G. J. Evans	Mr Latham	Mr Mossfield	

\* Tellers

And so it was resolved in the affirmative.

And the question—That the House do now adjourn—was put accordingly, and passed.

And then the House, at 6.34 p.m., adjourned until Monday, 2 December 1996, at 12.30 p.m., in accordance with the resolution agreed to this sitting.

**PAPER**

The following paper was deemed to have been presented on 21 November 1996:

Aged or Disabled Persons Care Act—Determination No. 1996-97/ACC02.

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**ATTENDANCE**

All Members attended (at some time during the sitting) except Mr Anderson, Mr Andren, Mr Campbell, Mrs Crosio, Mr Downer, Mr Fischer, Mr Howard, Mr Neville, Mr Pyne, Mr Reid\*, Mr S. F. Smith and Mr Willis\*.

\* On leave

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**L. M. BARLIN**

Clerk of the House of Representatives

1996

HOUSE OF REPRESENTATIVES  
SUPPLEMENT TO VOTES AND PROCEEDINGS

No. 53

**MAIN COMMITTEE**

MINUTES OF PROCEEDINGS

THURSDAY, 21 NOVEMBER 1996

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1 The Main Committee met at 10 a.m.

**2 EUTHANASIA LAWS BILL 1996**

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—*And on the amendment moved thereto by Mr Dondas, viz.*—That all words after “That” be omitted with a view to substituting the following words: “the House declines to give the Bill a second reading as it is of the opinion that to do so would be inappropriate given the conventions of self government, the judicial finding that voluntary euthanasia is a matter within the legislative and executive powers of the self governing Northern Territory and that such legislation would be within the capacity of the States and other self governing Territories of Australia”—

Debate resumed.

*Paper:* Dr Nelson, by leave, presented the following paper:

Voluntary Active Euthanasia: Position statement of the Australian Association for Hospice and Palliative Care Inc.

Debate continued.

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*Suspension of sitting:* At 11.15 a.m., a division having been called in the House, the proceedings were suspended.

*Resumption of sitting:* At 11.30 a.m., the proceedings were resumed.

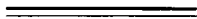
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Debate continued.

Debate adjourned (Mr Sawford), and the resumption of the debate made an order of the day for the next sitting.

**3 ADJOURNMENT**

On the motion of Mr M. A. J. Vaile, the Main Committee adjourned at 12.54 p.m.



**I. C. HARRIS**

Clerk of the Main Committee