

1996-97

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VOTES AND PROCEEDINGS**

No. 137

THURSDAY, 4 DECEMBER 1997

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 PUBLIC ACCOUNTS—JOINT COMMITTEE—PUBLICATION OF REPORT DURING NON-SITTING PERIOD**

Mr Reith (Leader of the House), pursuant to notice, moved—That:

- (1) if the House is not sitting when the Joint Committee of Public Accounts has completed the report of its inquiry into the Jindalee Operational Radar Network Project, the committee may send the report to the Speaker, or, in the absence or unavailability of the Speaker, to the Deputy Speaker. Upon receipt of the report by the Speaker or Deputy Speaker:
  - (a) the publication of the report is authorised by this resolution; and
  - (b) the Speaker or Deputy Speaker, as the case may be, is authorised to give directions for the printing and circulation of the report;
- (2) the foregoing provisions of this resolution, so far as they are inconsistent with the standing and sessional orders, have effect notwithstanding anything contained in the standing and sessional orders; and
- (3) a message be sent to the Senate acquainting it of this resolution.

Question—put and passed.

**3 STANDING ORDERS—AMENDMENTS**

Mr Reith (Leader of the House), pursuant to notice, moved—That the following amendments to the standing orders be made:

- (1) Standing order 212 be amended to read:

**212.** A Member bringing in a bill shall present to the House a fair copy signed by the Member.
- (2) Unless otherwise ordered, the following amendments to the standing orders be adopted for the autumn and winter periods of sittings in 1998:
  - (a) Standing order 81 be amended to read:

**Debate confined to present question—Exceptions**

**81.** No Member may digress from the subject matter of any question under discussion:

Provided that—

- (a) on the question for the adjournment of the House to terminate the sitting, or on the question for the adjournment of the Main Committee prior to 1.30 p.m. on a Thursday, matters irrelevant thereto may be debated, and
- (b) on the motion for the second reading of an Appropriation or Supply Bill, except an Appropriation or Supply Bill for expenditure that is not expenditure for the ordinary annual services of the Government, matters relating to public affairs may be debated.

(b) Standing order 91 (Time limits):

Omit:

Question for adjournment of House to terminate the sitting—

Each Member .....5 minutes  
 (no extension  
 of time to be  
 granted)

Provided that, if no other Member rises to address the House, a Member who has already spoken to the motion may speak a second time for a period not exceeding 5 minutes.

Substitute:

Question for adjournment of House or Main Committee (on a Thursday) to terminate the sitting—

Each Member .....5 minutes  
 (no extension  
 of time to be  
 granted)

Provided that, if no other Member rises to address the House or the Main Committee, a Member who has already spoken to the motion may speak a second time for a period not exceeding 5 minutes.

(c) Standing order 274 (Sittings and adjournment):

Omit paragraph (e), substitute:

(e) the Committee shall stand adjourned upon completion of consideration of all matters referred to it by the House: Provided

that, on a Thursday, if the Main Committee is sitting at 12.30 p.m., or on the earlier completion of all matters referred to it, the Chair shall propose the question—That the Committee do now adjourn.

- (d) New standing order 274A be inserted:

**Adjournment debates**

**274A.** The question—That the Committee do now adjourn—shall be open to debate which must, except prior to 1.30 p.m. on a Thursday, be relevant to the question:

Provided that:

- (a) if, on the question—That the Committee do now adjourn—being proposed, a Member requires the question to be put forthwith without debate, the Chair shall forthwith put the question;
- (b) if proceedings are interrupted, any business under discussion and not disposed of at the time of the adjournment shall be set down on the Notice Paper for the next sitting; and
- (c) if the question—That the committee do now adjourn—is negatived, the Committee shall resume the proceedings at the point at which they had been interrupted:

Provided further that, after the debate on the question—That the Committee do now adjourn—has continued for 30 minutes or until 1.30 p.m., whichever first occurs, the Chair shall interrupt the debate, at which time—

- (d) a Minister may require that the debate be extended for 10 minutes to enable Ministers to speak in reply to matters raised in the preceding adjournment debate; on the expiry of 10 minutes, or upon the earlier cessation of the debate, the Chair shall forthwith adjourn the Committee, or
- (e) if no action is taken by a Minister under paragraph (d) the Chair shall forthwith adjourn the Committee.

No amendment may be moved to the question—That the Committee do now adjourn—on any day.

- (e) New standing order 275A be inserted:

**Statements by Members**

**275A.** Notwithstanding standing order 275, when the Main Committee meets before 10 a.m. on a Thursday, the Chair shall first call statements by Members. A Member, other than a Minister, may be called by the Chair to make a statement for a period not exceeding 3 minutes. The period for Members' statements may continue for a maximum of 18 minutes or until 10 a.m. whichever is the earlier.

- (f) Standing order 276 (How question decided—Division not possible):

Add the following paragraph:

Provided that, if the question—That the Committee do now adjourn—is unresolved, it shall be deemed to have been resolved in the affirmative.

Debate ensued.

Question—put and passed.

#### 4 SESSIONAL ORDERS—ADOPTION AS STANDING ORDERS

Mr Reith (Leader of the House), pursuant to notice, moved—That:

- (1) the following sessional orders be adopted as standing orders:
  - (a) 195 (Members calling for division);
  - (b) 197 (No Member to vote unless present when tellers appointed);
  - (c) 199 (Division bells rung);
  - (d) 201 (Question stated; Members divided; Tellers appointed);
  - (e) 202 (Members present when tellers appointed must vote);
  - (f) 203 (Members counted, names taken down);
  - (g) 203A (Successive divisions—bells rung, tellers appointed);
  - (h) 203B (Successive divisions—vote same as in previous division); and
  - (i) 204 (If 4 or fewer Members on a side); and
- (2) standing order 200A be omitted.

Debate ensued.

Question—put and passed.

#### 5 SUPERANNUATION CONTRIBUTIONS AND TERMINATION PAYMENTS TAXES LEGISLATION AMENDMENT BILL 1997—SENATE'S MESSAGE NO. 403

The order of the day having been read for the consideration of message No. 403 from the Senate (*reported 2 December 1997*) returning the Superannuation Contributions and Termination Payments Taxes Legislation Amendment Bill 1997 and insisting on Senate amendment No. 7 disagreed to by the House—

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

#### 6 MESSAGE FROM THE SENATE—LIVE-STOCK TRANSACTIONS LEVY BILL 1997

A message from the Senate was reported returning the following Bill with a request for an amendment:

3 December 1997—Message No. 415—Live-stock Transactions Levy 1997.

Ordered—That the amendment requested by the Senate be considered forthwith.

SCHEDULE OF THE REQUEST BY THE SENATE FOR AN AMENDMENT  
Page 6 (after line 15), at the end of the bill, add:

**11 Cessation of operation of Act**

This Act, unless sooner repealed, ceases to be in force at the end of 2 years after the commencement time.

On the motion of Mr Truss (Minister for Customs and Consumer Affairs), the requested amendment was made.

**7 MESSAGE FROM THE SENATE—AUSTRALIAN MEAT AND LIVE-STOCK INDUSTRY (REPEALS AND CONSEQUENTIAL PROVISIONS) BILL 1997**

A message from the Senate was reported returning the following Bill with amendments:

3 December 1997—Message No. 407—Australian Meat and Live-stock Industry (Repeals and Consequential Provisions) 1997.

Ordered—That the amendments be considered forthwith.

**SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE**

- (1) Schedule 5, item 45, page 39 (line 25) to page 40 (line 16), omit the item.
- (2) Schedule 5, item 46, page 40 (line 21), omit paragraph (1)(b).
- (3) Schedule 5, item 46, page 40 (line 28), omit paragraph (2)(b).

On the motion of Mr Truss (Minister for Customs and Consumer Affairs), the amendments were agreed to, after debate.

**8 CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT BILL 1997**

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 Williams (Attorney-General), the Bill was read a third time.

**9 CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) CHARGES BILL 1997**

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 Williams (Attorney-General), the Bill was read a third time.

**10 APPROPRIATION BILL (NO. 3) 1997-98**

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 M. J. Evans), and the resumption of the debate made an order of the day for a later hour this day.

#### 11 MESSAGES FROM THE SENATE

Messages from the Senate were reported returning the following Bills without amendment:

3 December 1997—

No. 406—Australian Meat and Live-stock Industry 1997.

No. 408—Beef Production Levy Amendment 1997.

No. 409—Buffalo Export Charge 1997 (*without requests*).

No. 410—Buffalo Slaughter Levy 1997 (*without requests*).

No. 411—Cattle (Exporters) Export Charge 1997 (*without requests*).

No. 412—Cattle (Producers) Export Charges 1997 (*without requests*).

No. 413—Cattle Transactions Levy 1997 (*without requests*).

No. 414—Live-stock Slaughter (Processors) Levy 1997 (*without requests*).

No. 416—Live-stock (Exporters) Export Charge 1997 (*without requests*).

No. 417—Live-stock (Producers) Export Charges 1997 (*without requests*).

No. 418—National Residue Survey (Buffalo Slaughter) Levy 1997 (*without requests*).

No. 419—National Residue Survey (Cattle Transactions) Levy 1997 (*without requests*).

No. 420—National Residue Survey (Cattle Export) Levy 1997 (*without requests*).

No. 421—National Residue Survey (Sheep, Lambs and Goats Transactions) Levy 1997 (*without requests*).

No. 422—National Residue Survey (Sheep, Lambs and Goats Export) Levy 1997 (*without requests*).

#### 12 MESSAGE FROM THE SENATE—WORKPLACE RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 1997

Message No. 423, 3 December 1997, from the Senate was reported returning the Workplace Relations and Other Legislation Amendment Bill 1997 and acquainting the House that the Senate does not insist upon its amendments Nos. 1, 2, 13, 14 and 15 disagreed to by the House, has agreed to amendment No. 1 made by the House, has not agreed to amendment No. 2 made by the House, and has made further amendments to the Bill.

Ordered—That the message be considered forthwith.

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

- (1) Schedule 2, page 4 (line 2) to page 5 (line 19), omit the Schedule.
- (2) Schedule 7, page 17 (after line 12), after item 1, insert:

**1A Subsection 253ZI(1) (definition of *constituent member*)**

Repeal the definition, substitute:

***constituent member***, in relation to a constituent part of an amalgamated organisation, means:

- (a) in the case of a separately identifiable constituent part—a member of the amalgamated organisation who is included in that part; or
- (b) in any other case—a member of the amalgamated organisation who would be eligible for membership of the constituent part if:
  - (i) the constituent part; or
  - (ii) the organisation of which the constituent part was a branch;

as the case requires, were still registered as an organisation with the same rules as it had when it was de-registered under Division 7.

**1B Subsection 253ZI(1) (definition of *constituent part*)**

Repeal the definition, substitute:

***constituent part***, in relation to an amalgamated organisation, means:

- (a) a separately identifiable constituent part; or
- (b) a part of the membership of the amalgamated organisation that would have been eligible for membership of:
  - (i) an organisation de-registered under Division 7 in connection with the formation of the amalgamated organisation; or
  - (ii) a State or Territory branch of such a de-registered organisation;

if the de-registration had not occurred.

**1C Subsection 253ZI(1)**

Insert:

***separately identifiable constituent part***, in relation to an amalgamated organisation means:

- (a) if an organisation de-registered under Division 7 in connection with the formation of the amalgamated organisation remains separately identifiable under the rules of the amalgamated organisation as a branch, division or part of that organisation—that branch, division or part; or
- (b) if a State or Territory branch of such a de-registered organisation under its rules as in force immediately before its de-registration remains separately identifiable under the rules

of the amalgamated organisation as a branch, division or part of that organisation—that branch, division or part.

- (3) Schedule 7, page 17 (after line 29), after item 3, insert:

**3AA At the end of subsection 253ZJ(3)**

Add:

- ; or (c) if the application relates to a separately identifiable constituent part—the committee of management of that part.

- (4) Schedule 7, after item 3D, insert:

**3DA After section 253ZQ**

Insert:

**253ZQA Choice of organisation following withdrawal of separately identifiable constituent part**

- (1) This section applies in the case of a withdrawal from amalgamation under this Division by a separately identifiable constituent part of an amalgamated organisation.
- (2) As soon as practicable after the constituent part is registered as an organisation under section 253ZQ, the amalgamated organisation must send a written statement in accordance with subsection (3) to each person who, immediately before that registration, was a member of the amalgamated organisation attached to the constituent part.
- (3) The statement must:
  - (a) inform the person of the withdrawal from amalgamation of the constituent part; and
  - (b) invite the person to give written notice, within a period of 28 days after being sent the statement (the *notice period*), to the amalgamated organisation or to the newly registered organisation that:
    - (i) the person wants to remain a member of the amalgamated organisation; or
    - (ii) the person wants to become a member of the newly registered organisation; and
  - (c) explain the effect of responding, or failing to respond, to the invitation.
- (4) As soon as practicable after the amalgamated organisation receives a notice under paragraph (3)(b), it must notify the newly registered organisation of the receipt. As soon as practicable after the newly registered organisation receives a notice under paragraph (3)(b), it must notify the amalgamated organisation of the receipt.
- (5) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that he

or she wants to become a member of the newly registered organisation, he or she:

- (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the day upon which the notice is received by the amalgamated organisation or the newly registered organisation (as the case may be); and
  - (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).
- (6) If a person referred to in subsection (2):
  - (a) gives written notice in accordance with paragraph (3)(b) within the notice period that he or she wants to remain a member of the amalgamated organisation; or
  - (b) fails to give written notice in accordance with paragraph (3)(b) within the notice period;he or she remains a member of the amalgamated organisation.
- (7) A person who ceases to be a member of the amalgamated organisation because of the operation of subsection (5):
  - (a) is not liable to make any payment because the person gave no notice, or insufficient notice, of ceasing to be such a member under the rules of the organisation; and
  - (b) otherwise, remains liable for such payments as are due in accordance with those rules.
- (8) Notwithstanding paragraph (6)(b), if a person to whom that paragraph would apply, at any time before the day upon which the constituent part is registered as an organisation under section 253ZQ, gives notice in writing to the amalgamated organisation or to the applicant for a ballot under section 253ZJ that they wish to become a member of the newly registered organisation upon its registration under section 253ZQ, that person:
  - (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the day after the end of the notice period; and
  - (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).
- (9) As soon as practicable after the end of the notice period, the amalgamated organisation must notify the newly registered organisation of any notices under subsection (8) it has received. As soon as practicable after the end of the notice period, the newly registered organisation must notify the amalgamated organisation of

any notices under subsection (8) the applicant under section 253ZJ has received.

- (5) Schedule 7, after item 7, add:

**8 Applications, and commenced ballots, for withdrawals from amalgamations**

- (1) Subject to subitem (2), the amendments made by items 1A, 1B, 1C, 3AA and 3DA apply in relation to any application made before the commencement of this Schedule for a ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation.
- (2) The amendments made by items 1A, 1B, 1C, 3AA and 3DA:
- (a) do not apply to the extent (if any) that they would, apart from this paragraph, invalidate the application; and
  - (b) do not apply in relation to any proposal for a constituent part of an amalgamated organisation to withdraw from the organisation if the ballot to decide whether the constituent part should withdraw has commenced under section 253ZM of the *Workplace Relations Act 1996* before the commencement of this Schedule.
- (6) Schedule 9, page 23 (line 2) to page 24 (line 3), omit the Schedule.
- (7) Schedule 10, page 25 (line 2) to page 28 (line 11), omit the Schedule.

On the motion of Mr Reith (Minister for Workplace Relations and Small Business), amendment No. 2 disagreed to by the Senate was not insisted upon and the further amendments made by the Senate to the Bill were agreed to, after debate.

**13 APPROPRIATION BILL (NO. 3) 1997-98**

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.

**14 QUESTIONS**

Questions without notice being asked—

*Paper*

Mr Fischer (Minister for Trade) presented the following paper:

Passport issue—Facilitation: Question by Mr Brereton—Talking points note.

Questions without notice continued.

## 15 PAPER

The Speaker presented the following paper:

Committee reports—Schedule of Government responses to the reports of House of Representatives and joint committees, for period 27 June to 3 December 1997, and reports presented to which responses are outstanding, 3 December 1997.

## 16 AUDITOR-GENERAL'S REPORTS

The Speaker presented the following papers:

Audit Act—Auditor-General—Audit reports of 1997-98—

No. 17—Performance audit—Sydney Airport Noise Amelioration Program: Department of Transport and Regional Development.

No. 18—Performance audit—Management of the implementation of the new Commonwealth services delivery arrangements: Centrelink.

No. 19—Performance audit—Risk Management in ATO Small Business Income: Australian Taxation Office.

No. 20—Performance audit—Sales tax: Australian Taxation Office.

No. 21—Protective security.

No. 22—Financial statement audit—Audits of the financial statements of Commonwealth entities for 1996-97: Summary of results and outcomes.

Severally ordered to be printed.

## 17 PAPERS

The following papers were presented:

Aboriginal and Torres Strait Islander Affairs—Standing Committee—Report, May 1994—Review of Auditor-General's audit reports No. 36, 1992-93; No. 1, 1993-94, volume 3, sections 1.13-1.39; and No. 27, 1993-94, sections 16.19-16.24—Government response.

Report, June 1997—Review of Auditor-General's audit report No. 26, 1996-97—Community Development Employment Projects Scheme—Phase II of audit: Aboriginal and Torres Strait Islander Commission—Government response.

Anglo-Australian Telescope Agreement Act—Anglo-Australian Telescope Board—Report for 1996-97.

Data-matching Program (Assistance and Tax) Act—Data-matching program—Department of Social Security and Department of Employment, Education, Training and Youth Affairs—Report for 1996-97.

Legal and Constitutional Affairs—Standing Committee—Report, July 1997—Aspects of section 44 of the Australian Constitution—Government response.

Public Accounts—Joint Committee—Report 348—Advisory report on the Tax Law Improvement Bill 1996, March 1997—Government response.

**18 LEAVE OF ABSENCE TO ALL MEMBERS**

Mr Reith (Leader of the House) moved—That leave of absence be given to every Member of the House of Representatives from the determination of this sitting of the House to the date of its next sitting.

Question—put and passed.

**19 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—PRIME MINISTER'S PROGRESS REPORT TO THE PEOPLE**

The House was informed that Mr Beazley (Leader of the Opposition) had proposed that a definite matter of public importance be submitted to the House for discussion, namely, "The Prime Minister's failure to provide a 1997 progress report to the people".

The proposed discussion having received the necessary support—

Mr Beazley addressed the House.

Discussion ensued.

Discussion concluded.

**20 SPECIAL ADJOURNMENT**

Mr Howard (Prime Minister) moved—That the House, at its rising, adjourn until 2 March 1998, at 12.30 p.m. unless otherwise called together by the Speaker, or, in the event of the Speaker being unavailable, by the Deputy Speaker.

Debate ensued.

*Adjournment negatived*

It being approximately 5.30 p.m.—The question was proposed—That the House do now adjourn.

Mr Reith (Leader of the House) requiring the question to be put forthwith without debate—

Question—put and negatived.

Debate continued.

Question—put and passed.

**21 POSTPONEMENT OF ORDERS OF THE DAY**

Ordered—That orders of the day Nos. 5 to 7, government business, be postponed until a later hour this day.

**22 SUSPENSION OF STANDING ORDER 103**

Mr Reith (Leader of the House), by leave, moved—That standing order 103 (new business) be suspended for this sitting.

Question—put and passed.

**23 WORKPLACE RELATIONS AMENDMENT (SUPERANNUATION) BILL 1997**

Mr Reith (Minister for Workplace Relations and Small Business), pursuant to notice, presented a Bill for an Act to amend the *Workplace Relations Act 1996*, and for other purposes.

Bill read a first time.

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

*Paper*

Mr Reith presented an explanatory memorandum to the Bill.

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

**24 TAXATION LAWS AMENDMENT BILL (NO. 7) 1997**

Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister) presented a Bill for an Act to amend the law relating to taxation, 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 O'Connor), and the resumption of the debate made an order of the day for the next sitting.

**25 INSURANCE LAWS AMENDMENT BILL 1997**

Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister), pursuant to notice, presented a Bill for an Act to amend the law relating to insurance, and for other 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 O'Connor), and the resumption of the debate made an order of the day for the next sitting.

**26 TAXATION LAWS (TECHNICAL AMENDMENTS) BILL 1997**

Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister) presented a Bill for an Act to amend the law relating to taxation, and for other 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 Lee), and the resumption of the debate made an order of the day for the next sitting.

**27 AUSTRALIAN CAPITAL TERRITORY (PLANNING AND LAND MANAGEMENT) AMENDMENT BILL 1997**

Mr Somlyay (Minister for Regional Development, Territories and Local Government), pursuant to notice, presented a Bill for an Act to amend the *Australian Capital Territory (Planning and Land Management) Act 1988*, and for related purposes.

Bill read a first time.

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

*Paper*

Mr Somlyay presented an explanatory memorandum to the Bill.

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

**28 PARLIAMENTARY ZONE—MINOR REFURBISHMENT WORK TO OLD PARLIAMENT HOUSE—APPROVAL OF PROPOSAL**

Mr Somlyay (Minister for Regional Development, Territories and Local Government), pursuant to notice, moved—That, in accordance with section 5 of the *Parliament Act 1974*, the House approves the following proposal for work in the Parliamentary Zone which was presented to the House on 1 December 1997, namely: **Minor refurbishment work to Old Parliament House.**

Question—put and passed.

**29 AUSTRALIAN PARLIAMENTARY DELEGATION—REPORT—STATEMENTS BY MEMBERS**

Mr Lee, by leave, presented the following paper:

Australian Parliamentary Delegation to South Africa and the 43rd Commonwealth Parliamentary Association Conference, Mauritius, September 1997—Report.

Mr Lee, Mr Dondas and Mr Albanese, by leave, made statements in connection with the report.

**30 PUBLIC ACCOUNTS AND AUDIT—JOINT COMMITTEE**

Mr Somlyay (Minister for Regional Development, Territories and Local Government), by leave, moved—That Mr Anthony, Mr Beddall, Mr Broadbent, Mr Charles, Mrs Crosio, Mr Fitzgibbon, Mr Georgiou, Mr Griffin, Mr Sharp and Mrs Stone be appointed members of the Joint Committee of Public Accounts and Audit with effect from the date of commencement of Schedule 2 of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.

Question—put and passed.

**31 ADJOURNMENT NEGATIVED**

Mr Somlyay (Minister for Regional Development, Territories and Local Government) moved—That the House do now adjourn.

Debate ensued.

Question—put and negatived.

**32 SUSPENSION OF SITTING**

At 7.24 p.m. the Deputy Speaker left the Chair.

**FRIDAY, 5 DECEMBER 1997**

**33 RESUMPTION OF SITTING**

The Speaker resumed the Chair at 10 a.m.

**34 SUSPENSION OF STANDING AND SESSIONAL ORDERS MOVED**

Mr Bevis moved—That so much of the standing and sessional orders be suspended as would prevent the Member for Brisbane moving forthwith—That this House calls on the Minister for Defence to come into the House and provide a full account of the involvement of the Australian Defence Forces in the Dubai industrial mercenaries venture including:

- (1) how a member of the ADF came to be in Dubai prior to last week;
- (2) what duties that person has been undertaking and on whose orders;
- (3) what access was given by Defence to the company recruiting soldiers for the Dubai industrial mercenaries venture;
- (4) why Army personnel regulations have been breached;
- (5) why the Minister has not taken action to recall all Army personnel involved in the Dubai activity; and
- (6) why the Minister has not taken steps to ensure that other troops recruited to this escapade comply with Army regulations.

*Closure of Member*

Mr Reith (Leader of the House) moved—That the Member be not further heard.

Question—put.

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

## AYES, 79

Mr Anderson	Mrs Draper	Miss J. M. Kelly	Mr Sharp
Mr J. N. Andrew	Mrs Elson	Mr Lieberman	Mr Sinclair
Mr K. J. Andrews	Mr Entsch	Mr Lloyd	Mr Slipper*
Mr Anthony	Mr R. D. C. Evans	Mr McArthur*	Mr A. C. Smith
Mrs Bailey	Mr Fahey	Mr McDougall	Mr Somlyay
Mr R. C. Baldwin	Mr Forrest	Mr McGauran	Dr Southcott
Mr Barresi	Mrs Gallus	Mr McLachlan	Mrs Stone
Mr Bartlett	Ms Gambaro	Mr Marek	Mrs Sullivan
Mr Billson	Mrs Gash	Mr Miles	Mr Taylor
Mr Bradford	Mr Georgiou	Mr Moore	Mr A. P. Thomson
Mr Broadbent	Mrs E. J. Grace	Mr Nairn	Mr Truss
Mr Brough	Mr Hardgrave	Mr Nehl	Mr Tuckey
Mr Cadman	Mr Hawker	Dr Nelson	Mr M. A. J. Vaile
Mr E. H. Cameron	Mr Hicks*	Mr Neville	Mrs 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 Pyne	Mr Williams
Mr Cobb	Mr Jull	Mr Reid	Ms Worth
Mr Costello	Mr Katter	Mr Reith	Mr Zammit
Mr Dondas	Mrs D. M. Kelly	Mr Scott	

## NOES, 31

Mr Adams	Mr Dargavel	Dr Lawrence	Mr P. F. Morris
Mr Albanese*	Ms Ellis	Mr Lee	Mr Mossfield
Mr Bevis	Mr L. D. T. Ferguson	Mr McClelland	Mr O'Connor
Mr Brereton	Mr M. J. Ferguson	Mr McLeay*	Mr S. F. Smith
Mr Brown	Mr E. L. Grace*	Mr McMullan	Mr K. J. Thomson
Mr Campbell	Mr Holding	Mr Martin	Mr Willis
Mr Crean	Mr Hollis	Mr Melham	Mr Wilton
Mrs Crosio	Mr Jenkins	Mr A. A. Morris	

\* Tellers

And so it was resolved in the affirmative.

Mr McMullan (seconder) addressing the House—

*Closure of Member*

Mr Reith moved—That the Member be not further heard.

Question—put.

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

## AYES, 79

Mr Anderson	Mrs Draper	Miss J. M. Kelly	Mr Sharp
Mr J. N. Andrew	Mrs Elson	Mr Lieberman	Mr Sinclair
Mr K. J. Andrews	Mr Entsch	Mr Lloyd	Mr Slipper*
Mr Anthony	Mr R. D. C. Evans	Mr McArthur*	Mr A. C. Smith
Mrs Bailey	Mr Fahey	Mr McDougall	Mr Somlyay
Mr R. C. Baldwin	Mr Forrest	Mr McGauran	Dr Southcott
Mr Barresi	Mrs Gallus	Mr McLachlan	Mrs Stone
Mr Bartlett	Ms Gambaro	Mr Marek	Mrs Sullivan
Mr Billson	Mrs Gash	Mr Miles	Mr Taylor
Mr Bradford	Mr Georgiou	Mr Moore	Mr A. P. Thomson
Mr Broadbent	Mrs E. J. Grace	Mr Nairn	Mr Truss
Mr Brough	Mr Hardgrave	Mr Nehl	Mr Tuckey
Mr Cadman	Mr Hawker	Dr Nelson	Mr M. A. J. Vaile
Mr E. H. Cameron	Mr Hicks*	Mr Neville	Mrs 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 Pyne	Mr Williams
Mr Cobb	Mr Jull	Mr Reid	Ms Worth
Mr Costello	Mr Katter	Mr Reith	Mr Zammit
Mr Dondas	Mrs D. M. Kelly	Mr Scott	

## NOES, 32

Mr Adams	Mr Dargavel	Dr Lawrence	Mr P. F. Morris
Mr Albanese*	Ms Ellis	Mr Lee	Mr Mossfield
Mr Bevis	Mr L. D. T. Ferguson	Mr McClelland	Mr O'Connor
Mr Brereton	Mr M. J. Ferguson	Mr McLeay*	Mr Sercombe
Mr Brown	Mr E. L. Grace*	Mr McMullan	Mr S. F. Smith
Mr Campbell	Mr Holding	Mr Martin	Mr K. J. Thomson
Mr Crean	Mr Hollis	Mr Melham	Mr Willis
Mrs Crosio	Mr Jenkins	Mr A. A. Morris	Mr Wilton

\* Tellers

And so it was resolved in the affirmative.

Question—That the motion for the suspension of standing and sessional orders be agreed to—put.

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

## AYES, 35

Mr Adams	Ms Ellis	Mr Lee	Mr O'Connor
Mr Albanese	Mr L. D. T. Ferguson	Mr McClelland	Mr O'Keefe
Mr Bevis	Mr M. J. Ferguson	Mr McLeay*	Mr Price
Mr Brereton	Mr E. L. Grace*	Mr McMullan	Mr Sercombe*
Mr Brown	Mr Hatton	Mr Martin	Mr S. F. Smith
Mr Campbell	Mr Holding	Mr Melham	Mr K. J. Thomson
Mr Crean	Mr Hollis	Mr A. A. Morris	Mr Willis
Mrs Crosio	Mr Jenkins	Mr P. F. Morris	Mr Wilton
Mr Dargavel	Dr Lawrence	Mr Mossfield	

## NOES, 80

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

\* Tellers

And so it was negatived.

**35 MESSAGE FROM THE SENATE**

Message No. 425, 4 December 1997, from the Senate was reported returning the Live-stock Transactions Levy Bill 1997 and acquainting the House that the Senate had agreed to the Bill as amended by the House at the request of the Senate.

**36 MESSAGE FROM THE SENATE—LEGISLATIVE INSTRUMENTS BILL 1996**

Message No. 424, 3 December 1997, from the Senate was reported returning the Legislative Instruments Bill 1996 and acquainting the House that the Senate insists upon its amendments Nos. 1, 4 to 22, 24 to 27, 29 to 34, 36, 38, 39, 47, 49 and 54 disagreed to by the House and desires the reconsideration of the Bill by the House in respect of the amendments; has agreed to amendments Nos. 1, 4, 5 and 6 made by the House and has not agreed to amendments Nos. 2 and 3 made by the House.

Ordered—That the message be considered forthwith.

On the motion of Mr Williams (Attorney-General), the House insisted on disagreeing to amendments Nos. 1, 4 to 22, 24 to 27, 29 to 34, 36, 38, 39, 47, 49 and 54 insisted on by the Senate.

On the motion of Mr Williams, the House insisted on its further amendments Nos. 2 and 3 disagreed to by the Senate.

On the motion of Mr Williams, the Bill was laid aside.

**37 MEMBERS' INTERESTS COMMITTEE—PAPER**

Mr Reid (Chair) presented the following paper:

Committee of Members' Interests—Register of Members' Interests for the 38th Parliament—Notifications of alterations of interests received during the period 26 June to 3 December 1997.

**38 PUBLICATIONS COMMITTEE—16TH REPORT**

Mr Lieberman (Chair) presented the following paper:

**PUBLICATIONS COMMITTEE 16TH REPORT**

The Publications Committee, having considered petitions and documents presented to the House of Representatives since 26 November 1997, recommends that the following be printed:

Aboriginal and Torres Strait Islander Commission Act—Aboriginal and Torres Strait Islander Commercial Development Corporation—Report for 1996-97.

Aboriginal Deaths in Custody—Royal Commission—Implementation of the Commonwealth Government responses to the recommendations of the Royal Commission—Five years on—Report for 1996-97—

Vol. 1—Trends in Aboriginal and Torres Strait Islander deaths in custody and incarceration.

Vol. 2—Policy and programs: Addressing disadvantage.

Vol. 3—Breaking the cycle: The criminal justice system.

Administrative Review Council—Report to the Attorney-General and Minister for Justice—No. 41—Appeals from the Administrative Appeals Tribunal to the Federal Court

Albury-Wodonga Development Act—Albury-Wodonga Development Corporation—Report for 1996-97.

Anglo-Australian Telescope Agreement Act—Anglo-Australian Telescope Board—Report for 1996-97.

Australia and the Asian Development Bank—Report for 1996-97.

Australian National Railways Commission Act—Australian National Railways Commission (Australian National)—Report for 1996-97.

Australian National Training Authority Act—Australian National Training Authority—Report for 1996-97—Corrigendum.

Australian National University Act—Council of the Australian National University—

Report for 1996.

Research report for 1997.

Australian Security Intelligence Organization Act—Australian Security Intelligence Organization—Report for 1996-97.

Classification (Publications, Films and Computer Games) Act—Classification Board and Classification Review Board—Report for 1996-97—Errata.

Commissioner for Superannuation—Report for 1996-97, incorporating a report on the administration and operation of the Papua New Guinea (Staffing Assistance) Act—Corrigenda.

- Data-matching Program (Assistance and Tax) Act—Data-matching program—  
Reports for 1996-97—  
Department of Veterans' Affairs.  
Department of Social Security and Department of Employment, Education,  
Training and Youth Affairs.  
Defence—Australia's strategic policy—Strategic review, December 1997.  
Development Allowance Authority Act—Development Allowance Authority—  
Report for 1996-97.  
Federal Airports Corporation Act—Federal Airports Corporation—Report for  
1996-97.  
Federal Court of Australia Act—Federal Court of Australia—Report for 1996-  
97.  
Freedom of Information Act—Report for 1996-97.  
Human Rights and Equal Opportunity Commission Act—Human Rights and  
Equal Opportunity Commission—Inquiry into complaints of discrimination in  
employment and occupation—Reports—  
No. 2—Redundancy arrangements and age discrimination..  
No. 3—Discrimination on the ground of trade union activity.  
No. 4—Age discrimination in trade union membership rules.  
International Monetary Agreements Act—Australia and the IMF—Report for  
1996-97.  
International Monetary Agreements Act and the International Bank for  
Reconstruction and Development (General Capital Increase) Act—Australia  
and the World Bank—Report for 1996-97.  
Local Government (Financial Assistance) Act—National Office of Local  
Government—Report for 1996-97.  
National Crime Authority Act—National Crime Authority—Report for 1996-  
97.  
National Rail Corporation Agreement Act—National Rail Corporation  
Limited—Report for 1996-97.  
Pooled Development Funds Act—PDF Registration Board—Report for 1996-  
97.  
Primary Industries and Energy Research and Development Act—Dried Fruits  
Research and Development Council—Report for 1996-97.  
Royal Australian Air Force Veterans' Residences Act—Royal Australian Air  
Force Veterans' Residences Trust—Report for 1996-97.  
*Telecommunications Act 1991*—Australian Competition and Consumer  
Commission—Competitive safeguards and carrier performance, 1996-97.

LOU LIEBERMAN

Chair

5 December 1997

Mr Lieberman, by leave, moved—That the report be agreed to.

Question—put and passed.

**39 AUSTRALIAN PARLIAMENTARY DELEGATION—REPORT**

Mr Neville, by leave, presented the following paper:

Australian Parliamentary Delegation to France and Belgium, 26 June to 8 July 1997—Report, December 1997.

**40 APPROPRIATION BILL (NO. 3) 1997-98**

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.

*Paper*

Mr Fitzgibbon, by leave, presented the following paper:

Patterson, Trisha—Copy of text of a poem concerning industrial action in the coal industry, September 1997.

Debate continued.

Debate adjourned (Mr Costello—Treasurer), and the resumption of the debate made an order of the day for a later hour this day.

**41 CHARTER OF BUDGET HONESTY BILL 1996 [NO. 2]**

Mr Costello (Treasurer), by leave, presented a Bill for an Act to provide for a Charter of Budget Honesty.

Bill read a first time.

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

*Paper*

Mr Costello presented an explanatory memorandum to the Bill.

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

**42 SUSPENSION OF STANDING AND SESSIONAL ORDERS MOVED**

Mr McMullan moved—That so much of the standing and sessional orders be suspended as would prevent the Member for Canberra moving forthwith—That this House calls on the Minister for Workplace Relations and Small Business to come into this House and:

- (1) provide a full report to the House of the knowledge or involvement of his staff with the Dubai industrial mercenary operation;
- (2) explain his failure to deny the involvement of his office in the operation despite repeated questions on the matter;
- (3) guarantee that none of the consultancies funded by the Government on waterfront reform have been used to fund the planning or implementation of this operation; and
- (4) release the reports from those consultancies to reveal the extent to which these issues are canvassed in those reports.

*Closure of Member*

Mr Truss (Minister for Customs and Consumer Affairs) moved—That the Member be not further heard.

Question—put.

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

## AYES, 81

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

## NOES, 37

Mr Adams	Mr M. J. Ferguson	Mr Lee	Mr Sercombe*
Mr Albanese*	Mr Fitzgibbon	Mr McClelland	Mr S. F. Smith
Mr Bevis	Mr E. L. Grace*	Mr McMullan	Mr Tanner
Mr Breerton	Mr Hatton	Mr Martin	Dr Theophanous
Mr Brown	Mr Holding	Mr Melham	Mr K. J. Thomson
Mr Crean	Mr Hollis	Mr A. A. Morris	Mr Willis
Mr Dargavel	Mr Jenkins	Mr P. F. Morris	Mr Wilton
Ms Ellis	Mr Jones	Mr Mossfield	
Mr M. J. Evans	Mr Latham	Mr O'Keefe	
Mr L. D. T. Ferguson	Dr Lawrence	Mr Price	

\* Tellers

And so it was resolved in the affirmative.

Mr Bevis (seconder) addressing the House—

*Closure of Member*

Mr Truss moved—That the Member be not further heard.

Question—put.

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

## AYES, 79

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

## NOES, 37

Mr Adams	Mr M. J. Ferguson	Mr Lee	Mr Sercombe*
Mr Albanese*	Mr Fitzgibbon	Mr McClelland	Mr S. F. Smith
Mr Bevis	Mr E. L. Grace*	Mr McMullan	Mr Tanner
Mr Brereton	Mr Hatton	Mr Martin	Dr Theophanous
Mr Brown	Mr Holding	Mr Melham	Mr K. J. Thomson
Mr Crean	Mr Hollis	Mr A. A. Morris	Mr Willis
Mr Dargavel	Mr Jenkins	Mr P. F. Morris	Mr Wilton
Ms Ellis	Mr Jones	Mr Mossfield	
Mr M. J. Evans	Mr Latham	Mr O'Keefe	
Mr L. D. T. Ferguson	Dr Lawrence	Mr Price	

\* Tellers

And so it was resolved in the affirmative.

Question—That the motion for the suspension of standing and sessional orders be agreed to—put.

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

## AYES, 37

Mr Adams	Mr M. J. Ferguson	Mr Lee	Mr Sercombe*
Mr Albanese*	Mr Fitzgibbon	Mr McClelland	Mr S. F. Smith
Mr Bevis	Mr E. L. Grace*	Mr McMullan	Mr Tanner
Mr Breton	Mr Hatton	Mr Martin	Dr Theophanous
Mr Brown	Mr Holding	Mr Melham	Mr K. J. Thomson
Mr Crean	Mr Hollis	Mr A. A. Morris	Mr Willis
Mr Dargavel	Mr Jenkins	Mr P. F. Morris	Mr Wilton
Ms Ellis	Mr Jones	Mr Mossfield	
Mr M. J. Evans	Mr Latham	Mr O'Keefe	
Mr L. D. T. Ferguson	Dr Lawrence	Mr Price	

## NOES, 77

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

\* Tellers

And so it was negatived.

## 43 APPROPRIATION BILL (NO. 3) 1997-98

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 Reid), and the resumption of the debate made an order of the day for a later hour this day.

## 44 POSTPONEMENT OF ORDERS OF THE DAY

Ordered—That orders of the day Nos. 8 to 34, government business, be postponed until a later hour this day.

## 45 PUBLIC SERVICE BILL 1997—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 3, page 2 (after line 17), after paragraph (b), insert:
  - (ba) to define the powers and responsibilities of Agency Heads, the Public Service Commissioner and the Merit Protection Commissioner; and
- (2) Clause 7, page 5 (after line 22), after the definition of *locally engaged employee*, insert:
 

*merit*, in relation to the engagement and promotion of employees, means assessment of the relative suitability of candidates for employment or promotion using a competitive selection process, where the assessment is:

  - (a) based on the relationship between a candidate's work-related qualities and the work-related qualities identified by the Agency as required for the job; and
  - (b) the sole consideration in a decision to engage or promote an employee.
- (3) Clause 8, page 6 (line 11), omit "This", substitute "Subject to subsection 20(1A), this".
- (4) Clause 10, page 7 (lines 28 and 29), omit "a fair, flexible, safe and rewarding workplace", substitute:
 

its employees with:

  - (i) a fair, flexible, safe, healthy and rewarding workplace free from harassment; and
  - (ii) remuneration rates and conditions of employment commensurate with their responsibilities; and
  - (iii) fair and consistent treatment, free of arbitrary or capricious administrative acts or decisions; and
  - (iv) the right to be represented by unions; and
  - (v) opportunities for appropriate training and development; and
  - (vi) opportunities for appropriate participation in the decision-making processes of the Agency in which they are employed;
- (5) Clause 10, page 7 (after line 31), at the end of subclause (1), add:
  - ; (l) the APS promotes equity in employment;
  - (m) the APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment;

- (n) the APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government;
  - (o) the APS provides a fair system of review of decisions taken in respect of APS employees.
- (6) Clause 10, page 8 (lines 1 to 12), omit subclause (2).
- (7) Clause 11, page 8 (lines 14 to 18), omit subclause (1), substitute:
- (1) The Commissioner must issue directions in writing in relation to each of the APS Values for the purpose of:
    - (a) ensuring that the APS incorporates and upholds the APS Values; and
    - (b) determining where necessary the scope or application of the APS Values.
- (8) Clause 14, page 10 (line 9), at the end of the clause, add "and are subject to sanctions for breaches of the Code, to be determined by the Prime Minister on the recommendation of the Commissioner".
- (9) Clause 15, page 10 (lines 15 and 16), omit "include the following", substitute "are".
- (10) Clause 15, page 10 (line 21), at the end of subclause (2), add:  
; (f) admonishment.
- (11) Clause 15, page 10 (lines 24 and 25), omit "The procedures must have due regard to procedural fairness.", substitute "The procedures must be based on minimum standards, determined by the Commissioner, and must have due regard to procedural fairness.".
- (12) Clause 16, page 11 (after line 7), after paragraph (a), insert:  
(aa) the Merit Protection Commissioner or a person authorised for the purposes of this section by the Merit Protection Commissioner; or
- (13) Clause 17, page 11 (after line 14), after subclause (1), insert:  
(1A) A breach of subsection (1) is to be treated as a breach of the Code of Conduct.
- (14) Clause 20, page 12 (after line 7), after subclause (1), insert:  
(1A) An Agency Head must not enter into an Australian Workplace Agreement, within the meaning of the *Workplace Relations Act 1996*, with an APS employee.  
(1B) The regulations may prescribe exemptions from the requirement set out in subsection (1A), in relation to particular categories of APS employees.  
Note: For example, a particular category of APS employees could include "SES employees of the X Agency".
- (15) Clause 22, page 13 (after line 5), at the end of the clause, add:

- (5) Subject to this Act and to relevant awards and certified agreements, an Agency Head must engage a person as an APS employee on a permanent basis unless subsection (6) or (7) applies.
- (6) An Agency Head may engage a person as an APS employee on a fixed term of less than 6 months if, in the Agency Head's opinion, the need for temporary assistance will not adversely affect the maintenance of a career service or a stable workforce.
- (7) An Agency Head may engage a person as an APS employee on a fixed term of more than 6 months if, in the Agency Head's opinion, the employee is required to perform duties in relation to a project or task that has a fixed duration and:
  - (a) the Agency Head determines that the duties require skills or ability that is not, or cannot be made, available within the Agency; or
  - (b) in the case of a vacancy caused by a permanent officer being placed temporarily in another position or being on long term leave, there is no suitable permanent employee to fill the temporary vacancy.

(16) Page 13 (after line 5), after clause 22, insert:

**22A Engagement and promotion based on merit**

The engagement or promotion of an APS employee for any period in excess of 3 months must be on the basis of merit.

- (17) Clause 23, page 13 (line 11), after "time to time", insert "but may not diminish any such provisions".
- (18) Clause 24, page 13 (lines 24 to 26), omit ". For this purpose, **award** and **certified agreement** have the same meanings as in the *Workplace Relations Act 1996*.", substitute ", but may not diminish any such provisions."
- (19) Clause 24, page 14 (lines 1 and 2), omit "because of special circumstances", substitute ", provided any such determination does not diminish any provision of an award or certified agreement as in force at a particular time or as in force from time to time".
- (20) Clause 24, page 14 (after line 4), at the end of the clause, add:
  - (5) For the purposes of this section, **award** and **certified agreement** have the same meanings as in the *Workplace Relations Act 1996*.
- (21) Clause 25, page 14 (line 7), after "Agency,", insert "consistent with any provision in an award or certified agreement,".
- (22) Clause 25, page 14 (after line 8), at the end of the clause, add:
  - (2) An employee may apply to the Agency Head to decline a proposed transfer within 7 days after the employee receives notice of the transfer. The transfer is not to take effect unless the Agency Head rejects the application.

- (23) Clause 29, page 15 (lines 2 to 5), omit subclause (1), substitute:
- (1) An Agency Head may at any time following due process, by notice in writing, terminate the employment of an APS employee in the Agency if, in the opinion of the Agency Head, termination is justified on any of the following grounds:
    - (a) unsatisfactory work performance;
    - (b) physical or mental incapacity;
    - (c) loss of essential qualifications;
    - (d) a serious breach of the Code of Conduct;
    - (e) being excess to the requirements of the Agency.
- Note: The *Workplace Relations Act 1996* has rules and entitlements that apply to termination of employment.
- (24) Clause 29, page 15 (lines 8 and 9), omit subclause (3).
- (25) Clause 31, page 15 (after line 25), after subclause (2), insert:
- (2A) If an Agency Head, the Commissioner or the Merit Protection Commissioner receives any non-Commonwealth remuneration for performing duties pertaining to their offices, then the Agency Minister may give a notice in writing to the Agency Head, Commissioner or Merit Protection Commissioner in relation to the whole, or a specified part, of the remuneration.
  - (2B) The amount notified by the Agency Minister:
    - (a) is taken to have been received by the Agency Head, Commissioner or Merit Protection Commissioner, as the case may be, on behalf of the Commonwealth; and
    - (b) may be recovered by the Commonwealth from the Agency Head, Commissioner or Merit Protection Commissioner as a debt in a court of competent jurisdiction.
- (26) Clause 33, page 16 (after line 19), after subclause (2), insert:
- (2A) An application for review of an APS action (other than action which involves or has resulted in termination of employment) in respect of promotion to determine who is the most meritorious officer, redeployment, inefficiency or misconduct is to be determined by a Review Committee consisting of:
    - (a) an independent convenor nominated by the Merit Protection Commissioner; and
    - (b) a nominee of the relevant Agency Head; and
    - (c) an employee representative nominated in accordance with the regulations or in accordance with the provisions of an award or a certified agreement.
- Note: The *Workplace Relations Act 1996* has rules and entitlements that apply to the termination of employment.

- (2B) For the purposes of paragraph (2A)(c), the provisions of an award or certified agreement prevail over the provisions of the regulations to the extent of any inconsistency.
- (2C) A determination by a Review Committee is binding on the Agency Head.
- (2D) The Merit Protection Commissioner is to make recommendations to the relevant Agency Head in respect of an application for review of any APS action, other than an action included in subsection (2A), which has not been satisfactorily resolved at the Agency level.
- (27) Clause 36, page 17 (line 19), at the end of the clause, add “, including engagement, promotion, redeployment, mobility and termination”.
- (28) Clause 38, page 18 (lines 3 to 5), omit the clause, substitute:

### **38 Termination of employment**

In the case of termination of the employment of an SES employee, the Commissioner must certify that the termination meets the minimum requirements specified in a direction issued under section 36 and that the termination is in the best interests of the APS.

- (29) Clause 44, page 22 (after line 19), at the end of the clause, add:
  - (4) The report must be prepared in accordance with guidelines approved by the Joint Committee of Public Accounts and Audit on behalf of the Parliament.
- (30) Clause 46, page 23 (line 10), at the end of the clause, add “on the advice of the Remuneration Tribunal and are to be published in the *Gazette*”.
- (31) Clause 49, page 25 (lines 8 and 9), omit “and made available by the Public Service Commissioner”.
- (32) Clause 49, page 25 (after line 9), at the end of the clause, add:
  - (3) For the purposes of this Act:
    - (a) the Merit Protection Commissioner and the APS employees assisting the Merit Protection Commissioner together constitute a Statutory Agency; and
    - (b) the Merit Protection Commissioner is the Head of that Statutory Agency.
- (33) Clause 50, page 25 (lines 10 to 13), omit the clause, substitute:

### **50 Merit Protection Commissioner’s functions**

The Merit Protection Commissioner’s functions are:

- (a) to facilitate and support the proper and efficient operation of Review Committees in accordance with subsection 33(2A);
- (b) to make recommendations to Agency Heads in respect of applications for review of APS actions in accordance with subsection 33(2D);

- (c) to consider and report to the Public Service Minister on any matter relating to APS employment (including such a matter referred to the Merit Protection Commissioner by the Public Service Minister);
  - (d) to enquire into reports made to the Merit Protection Commissioner (or to a person authorised by the Merit Protection Commissioner) as mentioned in section 16;
  - (e) any function prescribed by the regulations.
- (34) Clause 51, page 25 (lines 16 and 17), omit “Public Service Commissioner”, substitute “Public Service Minister, for presentation to the Parliament.”.
- (35) Clause 51, page 25 (lines 19 and 20), omit subclause (2), substitute:
- (2) The report is to be prepared in accordance with guidelines approved by the Joint Committee of Public Accounts and Audit on behalf of the Parliament.
- (36) Page 25 (after line 20), after clause 51, insert:

#### **51A Capacity to report to the Prime Minister and Parliament**

Where action that is, in the opinion of the Merit Protection Commissioner, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in a report to an Agency or an investigation of a grievance, the Merit Protection Commissioner may in writing inform the Agency Minister, the Prime Minister, the President of the Senate and the Speaker of the House of Representatives.

- (37) Clause 52, page 26 (line 6), after “Governor-General”, insert “on a full-time basis and”.
- (38) Clause 53, page 26 (line 11), at the end of the clause, add “on the advice of the Remuneration Tribunal and are to be published in the *Gazette*”.
- (39) Page 27 (after line 17), after clause 55, insert:

### **Division 3—Miscellaneous**

#### **55A Immunity from suit**

The Merit Protection Commissioner, a member of a Review Committee established under subsection 33(2A) or a person acting under the direction or authority of the Merit Protection Commissioner is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise or purported exercise of any power or authority conferred by this Act.

**55B Protection from civil actions**

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person by reason of:
  - (a) the making of an application to the Merit Protection Commissioner under this Act; or
  - (b) the making of a statement to, or the furnishing of a document or information to, an officer for the purposes of this Act.
- (2) In subsection (1), *officer* means:
  - (a) the Merit Protection Commissioner; or
  - (b) a member of a Review Committee established under subsection 33(2A); or
  - (c) an employee of the Statutory Agency established under subsection 49(3); or
  - (d) a person, not being a person referred to in paragraph (c), to whom the Merit Protection Commissioner has delegated any of his or her powers under section 78.

**55C Officers to observe secrecy**

- (1) In this section, *officer* means:
  - (a) the Merit Protection Commissioner; or
  - (b) a member of a Review Committee established under subsection 33(2A); or
  - (c) an employee of the Statutory Agency established under subsection 49(3); or
  - (d) a person, not being a person referred to in paragraph (c), to whom the Merit Protection Commissioner has delegated any of his or her powers under section 78.
- (2) Subject to this section, an officer shall not, directly or indirectly, and either while he or she is, or after he or she ceases to be, an officer, make a record of, or divulge or communicate to any person, any information acquired by the officer by reason of his or her being an officer, being information that was disclosed or obtained under the provisions of section 33.

Penalty: \$1,000 or imprisonment for 6 months or both.

- (3) Subsection (2) does not prevent an officer:
  - (a) from making a record of, or divulging or communicating to any person, information acquired by the officer in the performance of his or her duties as an officer for purposes connected with the exercise of the powers and with the performance of the functions of the Merit Protection Commissioner under this Act; or

- (b) from divulging or communicating information to a person:
    - (i) if the information was furnished by an officer of an Agency or Commonwealth authority in the performance of his or her duties as such an employee—with the consent of the principal officer of the Agency or authority or of the responsible Minister; or
    - (ii) if the information was furnished by a person otherwise than as set out in subparagraph (i)—with the consent of the person who furnished the information.
  - (4) Subsection (2) does not prevent the Merit Protection Commissioner or a person to whom the Merit Protection Commissioner has delegated powers or functions under section 78 from disclosing, in a report made under this Act, such matters as, in his or her opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.
  - (5) A person who is or has been an officer is not competent and may not be required, in any proceedings before a court (whether exercising federal jurisdiction or not) or before a person authorised by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear, receive or examine evidence or to disclose any information acquired by the person by reason of his or her being or having been an officer, being information that was disclosed or obtained under the provisions of section 16 or 33.
  - (6) Subject to subsections (7) and (8), nothing in this Act is to be taken to preclude the Merit Protection Commissioner from disclosing information, or making a statement, to any person or to the public or a section of the public with respect to the performance of a function of the Merit Protection Commissioner under this Act if, in the opinion of the Merit Protection Commissioner, it is in the interests of any Agency, Commonwealth authority or person, or is otherwise in the public interest, so to disclose that information or to make that statement.
  - (7) The Merit Protection Commissioner must not disclose information or make a statement under subsection (6) with respect to a particular review where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of that review or of any other review.
  - (8) The Merit Protection Commissioner must not, in disclosing information or making a statement under subsection (6) with respect to a particular review disclose the name of an applicant or any other matter that would enable an applicant to be identified unless it is fair and reasonable in all the circumstances to do so.
- (40) Clause 57, page 28 (lines 13 to 15), omit the clause, substitute:

**57 Responsibilities of Secretaries**

- (1) The Secretary of a Department, under the Agency Minister, is responsible for the general working, and all the business, of the Department and is to advise the Agency Minister in all matters relating to the Department.
  - (2) The Secretary of a Department has a duty to assist the Agency Minister to fulfil his or her accountability obligations to the Parliament by providing full and accurate information to the Parliament about the factual and technical background to policies and their administration.
- (41) Clause 59, page 29 (lines 16 and 17), omit subclause (4).
  - (42) Clause 61, page 29 (line 26), at the end of the clause, add “on the advice of the Remuneration Tribunal and are to be published in the *Gazette*”.
  - (43) Clause 63, page 30 (after line 19), at the end of the clause, add:
    - (2) The report is to be prepared in accordance with guidelines approved by the Joint Committee of Public Accounts and Audit on behalf of the Parliament.
  - (44) Clause 65, page 32 (after line 21), at the end of the clause, add:
    - (5) Executive agencies are accountable to the Government, the Parliament and the Australian public in the same way as Departments.
  - (45) Clause 66, page 32 (lines 22 to 24), omit the clause, substitute:

**66 Responsibilities of Heads of Executive Agencies**

- (1) The Head of an Executive Agency, under the Agency Minister, is responsible for the general working, and all the business, of the Agency.
  - (2) The Head of an Executive Agency has a duty to assist the Agency Minister to fulfil his or her accountability obligations to the Parliament by providing full and accurate information to the Parliament about the factual and technical background to policies and their administration.
- (46) Clause 67, page 33 (line 2), omit “a relevant Secretary”, substitute “the Secretary of the Prime Minister’s Department”.
  - (47) Clause 67, page 33 (lines 5 to 10), omit subclauses (4) and (5), substitute:
    - (4) Before terminating the appointment of the Head of an Executive Agency, the Agency Minister must receive a report about the proposed termination from the Commissioner and the Secretary of the Prime Minister’s Department.
  - (48) Clause 68, page 33 (line 18), at the end of the clause, add “on the advice of the Remuneration Tribunal and are to be published in the *Gazette*”.
  - (49) Clause 70, page 34 (after line 8), at the end of the clause, add:

- (2) The report is to be prepared in accordance with guidelines approved by the Joint Committee of Public Accounts and Audit on behalf of the Parliament.
- (50) Clause 72, page 36 (lines 3 and 4), omit subclause (3), substitute:
- (3) Determinations under this section are to provide that the provisions of any relevant awards or certified agreements continue to apply to affected APS employees until new provisions are agreed to by those employees.
- (51) Clause 78, page 39 (after line 27), after subclause (5), insert:
- (5A) The Merit Protection Commissioner may, in writing, delegate to an APS employee any of the Merit Protection Commissioner's powers or functions under this Act (other than this section).
- (52) Clause 78, page 40 (after line 3), after subclause (6), insert:
- (6A) An Agency Head may not delegate a power or function under subsection (6) to a person who is not an APS employee or a person appointed to an office under a law of the Commonwealth, by the Governor-General or a Minister, unless the Commissioner approves in writing the proposed delegation—

On the motion of Dr Kemp (Minister Assisting the Prime Minister for the Public Service), the amendments were disagreed to, after debate.

On the motion of Dr Kemp, the Bill was laid aside, after debate.

#### 46 PUBLIC EMPLOYMENT (CONSEQUENTIAL AND TRANSITIONAL) AMENDMENT BILL 1997—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 5, page 8 (after line 2), after subclause (2), insert:
- Merit Protection Commissioner*
- (2A) At the commencing time, the person holding office as the Merit Protection Commissioner under the *Merit Protection (Australian Government Employees) Act 1984* becomes the Merit Protection Commissioner under the new Act, as if he or she had been appointed as the Merit Protection Commissioner under the new Act for a period equal to the unexpired part of his or her term under the old Act.
- (2) Clauses 6 and 7, page 9 (line 21) to page 10 (line 23), omit the clauses, substitute:

##### **6 Rights of first- and second-tier persons**

First- and second-tier persons retain all the rights conferred on them by the old Act, except for rights to reassessment for reintegration or reappointment.

- (3) Clause 9, page 11 (lines 6 to 12), omit subclauses (2) and (3), substitute:

- (2) A continued determination may be amended or revoked by the Agency Head in the same way as if it had actually been made under section 24 of the new Act, provided that no provision of the determination is diminished or revoked unless that provision is incorporated in an award or certified agreement.
- (3) Unless it is sooner revoked, a continued determination (including any amendments made by an Agency Head under section 24 of the new Act) ceases to be in force on the third anniversary of the commencing time—

On the motion of Dr Kemp (Minister Assisting the Prime Minister for the Public Service), the amendments were disagreed to, after debate.

On the motion of Dr Kemp, the Bill was laid aside.

#### 47 PARLIAMENTARY SERVICE BILL 1997—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 3, page 2 (after line 11), after paragraph (b), insert:
  - (ba) to define the powers and responsibilities of Secretaries and the Parliamentary Service Commissioner; and
- (2) Clause 7, page 5 (after line 3), after the definition of *insolvent under administration*, insert:
 

*merit*, in relation to the engagement and promotion of employees, means assessment of the relative suitability of candidates for employment or promotion using a competitive selection process, where the assessment is:

  - (a) based on the relationship between a candidate's work-related qualities and the work-related qualities identified by the Department as required for the job; and
  - (b) the sole consideration in a decision to engage or promote an employee.
- (3) Clause 8, page 6 (line 21), after "subsections", insert "21(1A),".
- (4) Clause 10, page 7 (lines 29 and 30), omit "a fair, flexible, safe and rewarding workplace", substitute:
 

its employees with:

  - (i) a fair, flexible, safe, healthy and rewarding workplace free from harassment; and
  - (ii) remuneration rates and conditions of employment commensurate with their responsibilities; and
  - (iii) fair and consistent treatment, free of arbitrary or capricious administrative acts or decisions; and
  - (iv) the right to be represented by unions; and

- (v) opportunities for appropriate training and development; and
  - (vi) opportunities for appropriate participation in the decision-making processes of the Department in which they are employed;
- (5) Clause 10, page 8 (after line 4), at the end of subclause (1), add:
- ; (l) the Parliamentary Service promotes equity in employment;
  - (m) the Parliamentary Service provides a fair system of review of decisions taken in respect of Parliamentary Service employees.
- (6) Clause 10, page 8 (lines 5 to 16), omit subclause (2).
- (7) Clause 11, page 8 (line 19), omit “may”, substitute “must”.
- Note: The heading to clause 11 is replaced with the heading “**Commissioner must give advice to Presiding Officers about Parliamentary Service Values**”.
- (8) Clause 11, page 8 (after line 23), at the end of the clause, add:
- (2) The Presiding Officers must issue written determinations under section 70 in relation to each of the Parliamentary Service Values, having regard to any advice received from the Commissioner under subsection (1).
  - (3) If a determination issued under subsection (2) is not in accordance with advice received from the Commissioner, the Presiding Officers must cause to be laid before each House of the Parliament a report explaining why they have not accepted the Commissioner’s advice.
- (9) Clause 14, page 10 (line 17), at the end of the clause, add “and are subject to sanctions for breaches of the Code, to be determined by the relevant Presiding Officer on the recommendation of the Parliamentary Service Commissioner”.
- (10) Clause 15, page 10 (lines 23 and 24), omit “include the following”, substitute “are”.
- (11) Clause 15, page 10 (after line 29), at the end of subclause (2), add:
- ; (f) admonishment.
- (12) Clause 15, page 11 (lines 3 and 4), omit “The procedures must have due regard to procedural fairness.”, substitute “The procedures must be based on minimum standards, determined by the Presiding Officers, after consulting the Commissioner, and must have due regard to procedural fairness.”.
- (13) Clause 16, page 11 (after line 15), after paragraph (a), insert:
- (aa) the Merit Protection Commissioner or a person authorised for the purposes of this section by the Merit Protection Commissioner; or
- (14) Clause 17, page 11 (after line 23), at the end of the clause, add:

- (2) A breach of subsection (1) is to be treated as a breach of the Code of Conduct.
- (15) Clause 21, page 13 (after line 27), after subclause (1), insert:
- (1A) A Secretary must not enter into an Australian Workplace Agreement, within the meaning of the *Workplace Relations Act 1996*, with a Parliamentary Service employee.
- (1B) The determinations may prescribe exemptions from the requirement set out in subsection (1A), in relation to particular categories of Parliamentary Service employees.
- Note: For example, a particular category of Parliamentary Service employees could include "SES employees of the X Department".
- (16) Clause 22, page 14 (after line 20), at the end of the clause, add:
- (5) Subject to this Act and to relevant awards and certified agreements, a Secretary must engage a person as a Parliamentary Service employee on a permanent basis unless subsection (6) or (7) applies.
- (6) A Secretary may engage a person as a Parliamentary Service employee on a fixed term of less than 6 months if, in the Secretary's opinion, the need for temporary assistance will not adversely affect the maintenance of a career service or a stable workforce.
- (7) A Secretary may engage a person as a Parliamentary Service employee on a fixed term of more than 6 months if, in the Secretary's opinion, the employee is required to perform duties in relation to a project or task that has a fixed duration and:
- (a) the Secretary determines that the duties require skills or ability that is not, or cannot be made, available within the Department; or
- (b) in the case of a vacancy caused by a permanent officer being placed temporarily in another position or being on long term leave, there is no suitable permanent employee to fill the temporary vacancy.

- (17) Page 14 (after line 20), after clause 22, insert:

**22A Engagement and promotion based on merit**

The engagement or promotion of a Parliamentary Service employee for any period in excess of 3 months must be on the basis of merit.

- (18) Clause 23, page 14 (line 27), after "time to time", insert "but may not diminish any such provisions".
- (19) Clause 24, page 15 (lines 12 to 14), omit ". For this purpose, **award** and **certified agreement** have the same meanings as in the *Workplace Relations Act 1996*.", substitute ", but may not diminish any such provisions."
- (20) Clause 24, page 15 (line 17), at the end of subclause (3), add ", provided any such determination does not diminish any provision of an award or

certified agreement as in force at a particular time or as in force from time to time”.

- (21) Clause 24, page 15 (after line 19), at the end of the clause, add:
- (5) For the purposes of this section, *award* and *certified agreement* have the same meanings as in the *Workplace Relations Act 1996*.
- (22) Clause 25, page 15 (line 22), after “Department,”, insert “consistent with any provision in an award or certified agreement.”.
- (23) Clause 25, page 15 (after line 23), at the end of the clause, add:
- (2) An employee may apply to the Secretary to decline a proposed transfer within 7 days after the employee receives notice of the transfer. The transfer is not to take effect unless the Secretary rejects the application.
- (24) Page 16 (after line 19), after clause 26, insert:

**26A Compulsory moves between the Parliamentary Departments and between the Parliamentary Service and the Australian Public Service**

- (1) The Commissioner may, with the agreement of the relevant Presiding Officer, move an excess Parliamentary Service employee to another Parliamentary Department or to an APS Agency.
- (2) For the purposes of this section, a Parliamentary Service employee is an *excess Parliamentary Service employee* if, and only if, the employee was covered by the *Public Service Act 1922* at the time this Act commenced and the Secretary has notified the Commissioner in writing that the employee is excess to the requirements of the Parliamentary Department or the Parliamentary Service.
- (25) Clause 28, page 16 (lines 25 to 29), omit subclause (1), substitute:
- (1) A Secretary may at any time following due process, by notice in writing, terminate the employment of a Parliamentary Service employee in the Department if, in the opinion of the Secretary, termination is justified on any of the following grounds:
- (a) unsatisfactory work performance;
- (b) physical or mental incapacity;
- (c) loss of essential qualifications;
- (d) a serious breach of the Code of Conduct;
- (e) being excess to the requirements of the Department.
- Note: The *Workplace Relations Act 1996* has rules and entitlements that apply to termination of employment.

- (26) Clause 28, page 17 (lines 1 and 2), omit subclause (3).
- (27) Clause 30, page 17 (after line 20), after subclause (2), insert:
- (2A) If a Secretary or the Commissioner receives any non-Commonwealth remuneration for performing duties as a Secretary or the Commissioner, as the case may be, then the Presiding

Officers may give a notice in writing to the Secretary or the Commissioner in relation to the whole, or a specified part, of the remuneration.

(2B) The amount notified by the Presiding Officers:

- (a) is taken to have been received by the Secretary or the Commissioner on behalf of the Commonwealth; and
- (b) may be recovered by the Commonwealth from the Secretary or the Commissioner as a debt in a court of competent jurisdiction.

(28) Clause 32, page 18 (after line 17), after subclause (2), insert:

(2A) An application for review of a Parliamentary Service action (other than action which involves or has resulted in termination of employment) in respect of promotion to determine who is the most meritorious officer, redeployment, inefficiency or misconduct is to be determined by a Review Committee consisting of:

- (a) an independent convenor nominated by the Merit Protection Commissioner; and
- (b) a nominee of the relevant Secretary; and
- (c) an employee representative nominated in accordance with the determinations or in accordance with the provisions of an award or a certified agreement.

Note: The *Workplace Relations Act 1996* has rules and entitlements that apply to the termination of employment.

(2B) For the purposes of paragraph (2A)(c), the provisions of an award or certified agreement prevail over the provisions of the determinations to the extent of any inconsistency.

(2C) A determination by a Review Committee is binding on the relevant Secretary.

(2D) The Merit Protection Commissioner is to make recommendations to the relevant Secretary in respect of an application for review of any Parliamentary Service action, other than an action included in subsection (2A), which has not been satisfactorily resolved by the Department.

(29) Clause 35, page 19 (lines 18 to 20), omit the clause, substitute:

**35 Presiding Officers' determinations on SES matters**

- (1) Following the receipt of advice from the Commissioner, the Presiding Officers must issue determinations in writing about employment matters relating to SES employees, including engagement, promotion, redeployment, mobility and termination.
- (2) If a determination issued under subsection (1) is not in accordance with advice received from the Commissioner, the Presiding Officers must cause to be laid before each House of the Parliament a report explaining why they have not accepted the Commissioner's advice.

- (30) Clause 37, page 20 (lines 4 to 6), omit the clause, substitute:

**37 Termination of employment**

In the case of termination of the employment of an SES employee, the Commissioner must certify that the termination meets the minimum requirements specified in a determination issued under section 35 and that the termination is in the best interests of the Parliamentary Service.

- (31) Clause 47, page 25 (line 11), after “functions”, insert “, powers and protections”.
- (32) Clause 47, page 25 (after line 13), at the end of the clause, add:  
 (2) Determinations referred to in subsection (1) are to adopt regulations made for the purposes of subsection 33(1) of the *Public Service Act 1997*, with or without modifications.
- (33) Clause 48, page 25 (lines 16 and 17), omit “to the Parliamentary Service Commissioner”.
- (34) Clause 48, page 25 (line 18), at the end of subclause (1), add “to the Presiding Officers for presentation to the Parliament”.
- (35) Clause 48, page 25 (lines 19 and 20), omit subclause (2).
- (36) Clause 57, page 29 (line 11), omit “members of”.
- (37) Clause 57, page 29 (line 15), omit “members of”.
- (38) Clause 57, page 29 (after line 15), after subclause (2), insert:  
 (2A) The Senate or the House of Representatives is to determine the form of the consultation referred to in subsection (1) or (2), as the case may be. Such a determination may authorise consultation with nominated Senators or Members or with a nominated committee consisting of Senators or Members.
- (39) Clause 60, page 31 (lines 8 and 9), omit subclause (3).
- (40) Clause 62, page 32 (lines 15 and 16), omit “after receiving a report from the Commissioner”, substitute “on the advice of the Remuneration Tribunal and are to be published in the *Gazette*”.
- (41) Clause 64, page 33 (after line 16), at the end of the clause, add:  
 (2) The report is to be prepared in accordance with guidelines approved by the Joint Committee of Public Accounts and Audit on behalf of the Parliament.
- (42) Clauses 76 and 77, page 43 (line 16) to page 44 (line 19), omit the clauses, substitute:

**76 Rights of first- and second-tier persons**

First- and second-tier persons retain all the rights conferred on them by the old Act, except for rights to reassessment for reintegration or reappointment.

(43) Clause 78, page 44 (lines 24 to 29), omit subclauses (2) and (3), substitute:

- (2) A continued determination may be amended or revoked by the Secretary in the same way as if it had actually been made under section 24, provided that no provision of the determination is diminished or revoked unless that provision is incorporated in an award or certified agreement.
- (3) Unless it is sooner revoked, a continued determination (including any amendments made by a Secretary under section 24) ceases to be in force on the third anniversary of the commencing time—

On the motion of Dr Kemp (Minister Assisting the Prime Minister for the Public Service), the amendments were disagreed to.

On the motion of Dr Kemp, the Bill was laid aside.

**48 APPROPRIATION BILL (NO. 3) 1997-98**

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 Fahey (Minister for Finance and Administration), the Bill was read a third time.

**49 APPROPRIATION BILL (NO. 4) 1997-98**

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 Fahey (Minister for Finance and Administration), the Bill was read a third time.

**50 APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (NO. 2) 1997-98**

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 Fahey (Minister for Finance and Administration), the Bill was read a third time.

**51 SUSPENSION OF SITTING**

At 10.43 p.m. the Deputy Speaker left the Chair.

**SATURDAY, 6 DECEMBER 1997****52 RESUMPTION OF SITTING**

The Speaker resumed the Chair at 9 a.m.

**53 ADJOURNMENT NEGATIVED**

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

Debate ensued.

Question—put and negatived.

**54 MESSAGE FROM THE SENATE—NATIVE TITLE AMENDMENT BILL 1997**

A message from the Senate was reported returning the following Bill with amendments:

5 December 1997—Message No. 426—Native Title Amendment 1997.

Ordered—That the amendments be considered forthwith.

**SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE*****Indigenous land use agreements*****Govt (15)**

Schedule 1, item 9, page 21 (line 11), after “conditions”, insert “(which may be about procedural matters)”.

**Govt (16)**

Schedule 1, item 9, page 24 (line 24), after “conditions”, insert “(which may be about procedural matters)”.

**Govt (17)**

Schedule 1, item 9, page 31 (after line 29), at the end of section 24CK, add:

*Matters to be taken into account*

- (4) In deciding whether he or she is satisfied as mentioned in paragraph (2)(c), the Registrar must take into account any information given in relation to the matter by:

- (a) the persons making the objections mentioned in that paragraph; and
- (b) the representative Aboriginal/Torres Strait Islander bodies that certified the application;

and may, but need not, take into account any other matter or thing.

**Govt (18)**

Schedule 1, item 9, page 33 (line 28), after “conditions”, insert “(which may be about procedural matters)”.

**Opp (48A)**

Schedule 1, item 9, page 21 (line 24), at the end of paragraph (f), add “, including past and intermediate period acts”.

**Opp (48B)**

Schedule 1, item 9, page 25 (line 7), at the end of paragraph (f), add “, including past and intermediate period acts”.

**Opp (48C)**

Schedule 1, item 9, page 34 (line 11), at the end of paragraph (f), add “, including past and intermediate period acts”.

***Applications*****Govt (60)**

Schedule 2, item 19, page 148 (line 9), after “waters”, insert “(including any activities in exercise of those rights and interests)”.

**Opp (230)**

Schedule 2, item 19, page 147 (lines 21 to 25), omit subparagraph (c)(ii), substitute:

- (ii) if any member of the native title claim group has been prevented from gaining access to any of the land or waters covered by the application—the circumstances in which the access was prevented.

**Opp (239)**

Schedule 2, item 19, page 151 (after line 26), after subsection (2), insert:

*Copies to representative bodies*

- (2A) The Registrar must, as soon as is reasonably practicable, give the representative bodies for the area covered by the application a copy of:
  - (a) the application; and
  - (b) any other documents that the Registrar of the Federal Court gives the Native Title Registrar under section 63 in relation to the application.

***Claims process and sunset clause*****Govt (58)**

Schedule 2, item 9, page 141 (lines 9 to 15), omit subsection (2A), substitute:

*Time limit for Division 3 compensation*

- (2A) If an act gives rise to an entitlement to compensation payable under Division 3, no application is allowed to be made under Part 3 for a determination of the compensation more than 6 years after the later of:
  - (a) the date of the act;
  - (b) the date of the act's termination;
  - (c) the date of the act's expiry;
  - (d) the date of the act's revocation;
  - (e) the date of the act's annulment;
  - (f) the date of the act's rescission;
  - (g) the date of the act's withdrawal;
  - (h) the date of the act's cancellation;
  - (i) the date of the act's annihilation;
  - (j) the date of the act's extinction;
  - (k) the date of the act's destruction;
  - (l) the date of the act's destruction of the land or waters covered by the application;
  - (m) the date of the act's destruction of the land or waters covered by the application.

- (a) the commencement of this subsection; and
- (b) the time when the doing of the act is notified to all of the following who exist for the area concerned at the time of the notification:
  - (i) registered native title bodies corporate;
  - (ii) registered native title claimants;
  - (iii) representative Aboriginal/Torres Strait Islander bodies.

**Govt (61)**

Schedule 2, item 20, page 162 (line 8), after “prejudice”, insert “unduly”.

**Govt (62)**

Schedule 2, item 25, page 176 (line 13), after “prejudice”, insert “unduly”.

**Govt (63)**

Schedule 2, page 176 (after line 16), after item 26, insert:

**26A Section 110 (table, column dealing with persons who may be appointed, row dealing with presidential members)**

Add:

; or (3) A person who is, and has been for at least 5 years, enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory.

**Govt (64)**

Schedule 2, item 34, page 182 (line 6), at the end of section 136E, add “, unless the member presiding directs otherwise and no party objects”.

**Govt (71)**

Schedule 2, item 79, page 208 (line 8), omit paragraph (a), substitute:

- (a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and

**Govt (72)**

Schedule 2, item 79, page 209 (after line 6), at the end of section 225, add:

Note: The determination may deal with the matters in paragraphs (c) and (d) by referring to a particular kind or particular kinds of non-native title interests.

**Opp (223)/Dems-GWA (190)/Harradine (1)**

Schedule 2, item 3, page 140 (lines 11 to 15), omit the item.

**Opp (242)**

Schedule 2, item 19, page 154 (line 21), after “(5)”, insert “or (5B)”.

**Opp (247)**

Schedule 2, item 20, page 163 (line 18), omit “paragraph 66(3)(a)”, substitute “subparagraph 66(3)(a)(i), (ii), (iii), (iv), (v) or (vi)”.

**Opp (248)**

Schedule 2, item 20, page 163 (lines 21 and 22), omit subparagraph (iii).

**Opp (249)**

Schedule 2, item 20, page 164 (lines 3 to 5), omit subsection (5), substitute:

- (5) Another person is a party to the proceedings if the person satisfies the Federal Court that he or she has an interest (see section 253) in relation to the land or waters concerned or a part of them.
- (5A) If the relevant Minister is a party, a person is not entitled to be a party to the proceedings only because he or she exercises or enjoys a public right of access to, or use of, the land or waters concerned.
- (5B) If, in the absence of a relevant Minister, there are persons seeking to be joined to represent those enjoying public interests, the Federal Court may give directions to ensure that their interests are properly represented, but need not join more than one person to represent a particular interest.

**Harradine (1)**

Schedule 2, item 20, page 162 (line 6), omit “may”, substitute “must”.

***Registration test***

**Govt (66)**

Schedule 2, item 63, page 191 (lines 8 and 9), omit “that is covered by an entry on the Register”, substitute “(whether or not covered by an entry on the Register)”.

**Govt (67)**

Schedule 2, item 63, page 193 (line 4), after “section 63”, insert “or subsection 64(4)”.

**Govt (68)**

Schedule 2, item 63, page 194 (after line 6), after subsection (5), insert:

*Notification about amending application*

- (5A) Before the Registrar has decided whether or not to accept the claim for registration, he or she may notify the applicant that the application may be amended under the Federal Court Rules.

**Govt (69)**

Schedule 2, item 63, page 194 (after line 18), at the end of section 190A, add:

*Effect of withdrawal etc. of application*

(7) If:

- (a) before the Registrar has decided whether or not to accept the claim for registration; or
- (b) after the Registrar has decided to accept the claim for registration but before the Registrar has included details of the claim in the Register of Native Title Claims;

the Registrar is notified under section 189 or 189A of a decision or determination to the effect that the application has been dismissed or otherwise finalised, or is notified that the application has been withdrawn, the Registrar must not:

- (c) decide whether or not to accept the claim for registration; or
- (d) enter the details in the Register;

as the case requires.

**Opp (262)**

Schedule 2, item 63, page 194 (line 25), omit “with certainty”, substitute “with reasonable certainty”.

**Opp (265)**

Schedule 2, item 63, page 195 (line 10), at the end of subsection (4), add “, even though the rights and interests are not described in terms appropriate to any analogous common law interests”.

**Opp (267) [as amended by Harradine amt]**

Schedule 2, item 63, page 195 (line 16) to page 196 (line 12), omit subsections (6), (7), (8) and (9), substitute:

- (6) The factual basis upon which the continued existence of native title rights and interests is claimed must include an assertion that:
  - (a) at least one member of the native title claim group:
    - (i) currently has or previously had a traditional physical connection with the land or waters covered by the application, or with areas or sites of particular significance within the area covered; or
    - (ii) would reasonably have expected to maintain such a traditional physical connection but for the actions (other than actions consisting of the valid grant of an interest in land) of the Crown, a statutory authority or another person preventing the maintenance of the physical connection; or
  - (b) the native title claim group has continued to acknowledge traditional laws and (so far as practicable) to observe traditional customs so that the traditional connection with the land has been substantially maintained.

- (7) The Registrar must consider that, prima facie, the assertion referred to in subsection (6) can be made out.
- (8) If the Registrar is considering placing reliance on material which is adverse to the interests of the claimant, or inconsistent with material supplied by the claimant, the claimant must be shown the material and given a reasonable opportunity to respond or supply further material.
- (9) If, after receiving a response or other material from the claimant, the Registrar is satisfied that there is a genuine factual dispute with respect to the adverse or inconsistent material or a genuine legal dispute as to its effect, the Registrar must not consider the adverse or inconsistent material further.

### ***Representative bodies***

#### **Govt (77)**

Schedule 3, item 11, page 224 (before line 19), before subsection (1), insert:

- (1A) The Commonwealth Minister must determine applications under section 203AB:

- (a) as soon as practicable after:

- (i) the period specified under subsection 203A(3); or
- (ii) if a further period applies under subsection 203AB(2) in relation to one or more of those applications—the last such further period to end; or
- (iii) if the Commonwealth Minister has, in relation to one or more of those applications, given to a body a notice under subsection (1) requiring the body to give further information within a specified period—the last such period to end;

whichever occurs last; and

- (b) if the applications are in respect of an invitation to which subsection 203AA(3) applied—in any event before the end of the transition period.

Note: The heading to section 203AC (page 224, line 18) is replaced by the heading "**Dealing with applications**".

#### **Govt (78)**

Schedule 3, page 232 (after line 15), after item 18, insert:

#### **18A Subsection 108(1B)**

Repeal the subsection, substitute:

#### *Assistance and mediation generally*

- (1B) The Tribunal has the functions of:

- (a) providing assistance, or mediating, in accordance with any provision of this Act; and
- (b) entering into agreements as mentioned in subsection 203BK(3) in relation to assistance of the kind referred to in that subsection.

**Govt (79)**

Schedule 3, item 30, page 250 (after line 19), at the end of section 203BK, add:

*Assistance in performing dispute resolution functions*

- (3) Without limiting subsection (1), in performing its dispute resolution functions in a particular case, a representative body may be assisted by the NNTT, but only if the representative body and the NNTT have entered into an agreement under which the representative body is liable to pay the NNTT for the assistance.

**Govt (80)**

Schedule 3, item 30, page 250 (lines 27 and 28), omit “in respect of a financial year or part of a financial year to the representative body,”, substitute “to the representative body”.

**Govt (81)**

Schedule 3, item 30, page 250 (after line 29), at the end of section 203C, add:

- (3) The grant of money may be:
  - (a) in respect of a financial year; or
  - (b) in respect of a part of a financial year; or
  - (c) in respect of any other period not exceeding 3 years.

**Govt (82)**

Schedule 3, item 30, page 251 (after line 20), after subsection (1), insert:

*Repayment of part of grant on withdrawal of recognition*

- (1A) The grant is also subject to a condition that if:
  - (a) the representative body’s recognition as a representative body is withdrawn under section 203AH; and
  - (b) the withdrawal takes effect during the period to which the grant relates;

the representative body must repay to ÁTSIC an amount equal to so much (if any) of the grant as is uncommitted at the time the recognition is withdrawn.

*Uncommitted amount of the grant*

- (1B) For the purposes of subsection (1A), the amount of the grant that is uncommitted is the difference (if any) between:

- (a) the portion (if any) of the grant that has, at the time the recognition is withdrawn, been paid to the representative body by ATSIC; and
- (b) the sum of:
  - (i) the portion (if any) of the grant that has, at that time, been spent by the representative body in connection with the performance of its functions and the exercise of its powers; and
  - (ii) the portion (if any) of the grant that the representative body is, at that time, liable to pay to other persons in connection with the performance of its functions and the exercise of its powers.

### **Govt (83)**

Schedule 3, item 30, page 253 (lines 13 and 14), omit the definition of **bank**, substitute:

**bank** means:

- (a) a person who carries on the business of banking, either in Australia or outside Australia; or
- (b) any other institution:
  - (i) that carries on a business in Australia that consists of or includes taking money on deposit; and
  - (ii) the operations of which are subject to prudential supervision or regulation under a law of the Commonwealth, a State or a Territory.

### **Govt (84)**

Schedule 3, item 30, page 259 (after line 28), at the end of section 203DF, add:

*Report not to contain matters subject to legal professional privilege*

- (6) A report under subsection (4) must not contain any information, or include any document or record, that is subject to legal professional privilege or that is derived from information that is subject to legal professional privilege.

*Legal professional privilege must be claimed*

- (7) For the purposes of subsection (6), information, or a document or record, is not taken to be subject to legal professional privilege unless, at or before the time it was obtained by the person appointed under subsection (1), it was claimed to be subject to legal professional privilege by a person entitled to make such a claim.

*Auditor or investigator taken to be a Commonwealth officer*

- (8) To avoid doubt, a person appointed under subsection (1) of this section is taken, for the purposes of sections 70, 72, 73, 74 and 75 of the *Crimes Act 1914*, to be a Commonwealth officer.

### **Govt (85)**

Schedule 3, item 30, page 259 (line 29) to page 260 (line 12), omit section 203DG, substitute:

#### **203DG Access to information**

##### *General*

- (1) For the purpose of conducting an inspection and audit, or an investigation, of a representative body under section 203DF, the person appointed under subsection 203DF(1):
- (a) is entitled at all reasonable times to full and free access to documents relating to the representative body; and
  - (b) may make copies, or take extracts from, any such document; and
  - (c) may require a representative body:
    - (i) to answer such questions; and
    - (ii) to produce such documents in the representative body's possession or to which the representative body has access;
 as the person so appointed considers necessary for that purpose.

##### *Use of legally professionally privileged documents*

- (2) A representative body must produce a document or record or disclose information as required under paragraph (1)(c), whether or not the document, record or information is the subject of legal professional privilege.

##### *Production does not affect legal professional privilege*

- (3) A document, record or information does not cease to be the subject of legal professional privilege merely because it is produced under paragraph (1)(c).

##### *Failure to comply with paragraph (1)(c)*

- (4) A representative body who, without reasonable excuse, refuses or fails to comply with the requirement under paragraph (1)(c) is guilty of an offence punishable upon conviction by a fine not exceeding 20 penalty units.

##### *Self-incrimination*

(5) For the purposes of subsection (4), it is not a reasonable excuse for a representative body to refuse or fail:

- (a) to give information; or
- (b) to produce a record or document;

in accordance with a requirement under paragraph (1)(c), on the ground that the information or the production of the document or record, as the case may be, might tend to incriminate the representative body or make the representative body liable to a penalty.

*Admissibility in criminal proceedings*

(6) Despite subsection (5):

- (a) giving the information or producing the document or record; or
- (b) any information, document, record or thing obtained as a direct or indirect consequence of the giving of the information or production of the document or record;

is not admissible in evidence against the person in any criminal proceedings, other than proceedings against, or arising out of, subsection (4) or (7).

*Knowingly making a statement that is false or misleading*

(7) A representative body who, in purported compliance with the requirement under paragraph (1)(c), makes a statement that it knows to be false or misleading in a material particular, is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

**Opp (312)**

Schedule 3, item 11, page 228 (line 11), at the end of subsection (3), add:

However, the body must not allow access to or transfer documents or records that are the subject of legal professional privilege or copyright, or of knowledge owned, according to traditional law and custom, by a third person, without:

- (a) for privilege, copyright or knowledge of a third person—the consent of the third person; or
- (b) for privilege or copyright of the body—the consent of the body.

**Opp (322)**

Schedule 3, item 30, page 240 (after line 28), at the end of section 203B, add:

*Priorities of representative bodies*

(4) A representative body:

- (a) must from time to time determine the priorities it will give to performing its functions under this Part; and
  - (b) may allocate resources in the way it thinks fit so as to be able to perform its functions efficiently;
- but must give priority to the protection of the interests of native title holders.

**Opp (332)**

Schedule 3, item 30, page 248 (after line 31), at the end of section 203BG, add:

- (2) In considering what is reasonably practicable for the purposes of subsection (1), the resources available to the representative body may be taken into account.
- (3) The notification functions of a representative body are not intended to derogate from, diminish or impair in any way the obligations imposed under this Act on a government, Minister or other person to give notices.

**Opp (341)**

Schedule 3, item 30, page 256 (lines 14 to 21), omit subsection (1), substitute:

- (1) A representative body must, in respect of each financial year:
  - (a) prepare a report of the operations of the body during that year, together with financial statements in respect of that year; and
  - (b) give the report and the financial statements to ATSIC by 15 October in the next financial year.

**Opp (342)**

Schedule 3, item 30, page 256 (line 23), omit "The Commonwealth Minister", substitute "ATSIC".

**Opp (344)**

Schedule 3, item 30, page 257 (lines 22 and 23), omit "The Commonwealth Minister must cause a copy of a report and financial statements given under subsection (1)", substitute "On receipt of a report and financial statements given under subsection (1), ATSIC must provide a copy of each document to the Commonwealth Minister, who must cause them".

***Use of reserved land*****Govt (26)**

Schedule 1, item 9, page 60 (after line 29), at the end of section 24JB, add:

*Notification*

- (6) If the act consists of the construction or establishment of a public work, then, before the act is done, the person proposing to do the act must:

- (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the reservation or lease that the act, or acts of that class, are to be done in relation to the land or waters; and
- (b) give them an opportunity to comment on the act or class of acts.

### ***Facilities for services to the public***

#### **Opp (100)**

Schedule 1, item 9, page 63 (lines 7 to 17), omit subsection (7), substitute:

- (7) The native title holders have the same procedural rights as they would have in relation to the act on the assumption that they instead held ordinary title covering any land concerned or covering the land adjoining, or surrounding, any waters concerned.

### ***Miscellaneous***

#### **Govt (13)**

Schedule 1, item 9, page 18 (line 15), omit the heading to Subdivision A, substitute:

#### **Subdivision A—Preliminary**

##### **Govt (14)**

Schedule 1, item 9, page 20 (after line 26), at the end of Subdivision A, add:

##### **24AC Regulations about notification**

The regulations may impose requirements to notify persons of acts, or classes of acts, that are to any extent valid under this Division (whether such notice is required to be given before or after the acts are done).

##### **Govt (44)**

Schedule 1, item 10, page 117 (line 25), after “interests”, insert “, but do not extinguish them”.

##### **Govt (47)**

Schedule 1, item 27, page 120 (lines 10 and 11), omit the item.

##### **Govt (49R)**

Schedule 1, page 125 (line 4), omit “subparagraph 24GE(1)(f)(i)”, substitute “paragraph 23HA(a), 24GB(9)(c) or 24GD(6)(a), subparagraph 24GE(1)(f)(i), paragraph 24HA(7)(a), 24ID(3)(a) or 24JB(6)(a)”.

##### **Govt (70)**

Schedule 2, item 71, page 203 (line 12), after “sections”, insert “139”.

**Govt (73)**

Schedule 2, item 84, page 209 (lines 16 to 18), omit the item.

**Govt (74)**

Schedule 2, item 87, page 210 (line 1), omit “**subparagraph 251(2)(i)**”, substitute “**subparagraph 251(2)(i)(i)**”.

**Govt (75)**

Schedule 2, item 98, page 212 (line 3), omit “subparagraph 193(2)(d)(ii)”, substitute “subparagraph 193(2)(d)(iii)”.

**Govt (76)**

Schedule 2, item 98, page 212 (lines 5 and 6), omit “subparagraph 193(2)(d)(iii)”, substitute “subparagraph 193(2)(d)(iv)”.

**Harradine (56)**

Schedule 2, item 71, page 201 (lines 24 to 33), omit paragraph (f), substitute:

- (f) the law of the State or Territory requires a member of the NNTT to be a member of the equivalent body; and

**GWA (1)**

Schedule 2, item 71, page 201 (after line 9), after paragraph (b), insert:

- (ba) the law of the State or Territory will provide for judicial review of decisions of the one or more equivalent bodies (including the provision of a statement of reasons for the decision and procedures for, and grounds of, review) equivalent to those available under the *Administrative Decisions (Judicial Review) Act 1977*; and

**GWA (2)**

Schedule 2, item 71, page 201 (after line 33), after paragraph (f), insert:

- (fa) members of the equivalent bodies will only be appointed by the Governor or Administrator, as the case may be, and will enjoy no less security of tenure and independence from government than are provided to members of the NNTT under this Act; and

***Management of water and airspace*****Govt (25)**

Schedule 1, item 9, page 55 (after line 6), at the end of section 24HA, add:

*Notification*

- (7) Before an act covered by subsection (2) is done, the person proposing to do the act must:
  - (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native

title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act, or acts of that class, that the act, or acts of that class, are to be done; and

- (b) give them an opportunity to comment on the act or class of acts.

### ***Offshore places***

#### **Govt (31)**

Schedule 1, item 9, page 70 (line 30), omit “(whether compulsorily or otherwise)”.

#### **Govt (32)**

Schedule 1, item 9, page 71 (after line 2), after paragraph (b), insert:

- and (c) the practices and procedures adopted in acquiring the native title rights and interests are not such as to cause the native title holders any greater disadvantage than is caused to the holders of non-native title rights and interests when their rights and interests are acquired;

#### **Govt (33)**

Schedule 1, item 9, page 71 (line 31) to page 72 (line 2), omit subparagraph (7)(a)(i), substitute:

- (i) if a law of the Commonwealth provides that a person other than the Crown in right of the Commonwealth is liable to pay the compensation—that person; or

#### **Govt (34)**

Schedule 1, item 9, page 72 (lines 5 to 8), omit subparagraph (b)(i), substitute:

- (i) if a law of the State or Territory provides that a person other than the Crown in any capacity is liable to pay the compensation—that person; or

### ***Compensation***

#### **Govt (46)**

Schedule 1, page 120 (after line 9), after item 26, insert:

#### **26A Paragraph 53(1)(a)**

Omit “by the Commonwealth”.

#### **26B Subsection 53(1)**

Omit “from the Commonwealth as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.”, substitute:

from:

- (c) if the compensation is in respect of a future act attributable to a State or a Territory—the State or Territory; or
- (d) in any other case—the Commonwealth;

as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.

**Govt (92)**

Schedule 5, page 324 (after line 13), after paragraph (2)(a), insert:

- (aa) ensures that there will be compensation for the effect of this Act (see Part 6A); and

**Govt (93)**

Schedule 5, page 342 (after line 28), after Part 6, insert:

**Part 6A—Compensation etc.**

**27A Entitlement to “just terms” compensation**

- (1) If, apart from this item, the application of any of the provisions of this Act in any particular case would result in a paragraph 51(xxxi) acquisition of property of a person other than on paragraph 51(xxxi) just terms, the person is entitled to such compensation, or compensation in addition to any otherwise provided by the *Native Title Act 1993*, from:

- (a) if the compensation is in respect of a future act attributable to a State or a Territory—the State or Territory; or  
 (b) in any other case—the Commonwealth;

as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.

*Federal Court's jurisdiction*

- (2) The Federal Court has jurisdiction with respect to matters arising under subitem (1) and that jurisdiction is exclusive of the jurisdiction of all other courts except the High Court.

**Opp (184)**

Schedule 1, item 10, page 117 (after line 20), after paragraph (b), insert:

and (ba) the activity is validly undertaken:

- (i) in accordance with the terms of the lease, licence, permit or authority; and  
 (ii) in accordance with any conditions applicable at the time the activity was undertaken; and  
 (iii) in accordance with any requirements or conditions applicable under this Act, any other Act and any law of the State or Territory concerned;

**Opp (188)**

Schedule 1, page 118 (after line 6), after item 13, insert:

**13A Subsection 50(1)**

Omit “section”, substitute “Division”.

**13B Subsection 51(1)**

Omit “Subject to subsection (3), the”, substitute “The”.

**13C After subsection 51(1)**

Insert:

- (1A) To avoid doubt, the entitlement to compensation referred to in subsection (1) arises whether the loss, diminution, impairment or other effect of the act on native title rights and interests occurs as a result of a valid act or an invalid act.

**Opp (192)**

Schedule 1, page 120 (after line 9), after item 26, insert:

**26A After section 53**

Insert:

**53A Small compensation claims**

- (1) If a claimant lodges a claim for compensation in respect of an act in the Federal Court, the claimant may:
- (a) place before the Court such material as he or she thinks fit for the purpose of establishing to the requisite degree of satisfaction that, unless alternative procedures are directed, it would not be reasonable for the claimant to pursue the claim, given the likely amount of compensation available; and
  - (b) seek from the Court an order that the matter be referred to the Tribunal for determination in accordance with such directions as the Court may think appropriate; and
  - (c) seek such directions as the claimant considers appropriate.
- (2) The Court may make the order sought if it is satisfied that:
- (a) there is available to the applicant prima facie evidence of the existence of the native title rights and interests in relation to which compensation is sought; and
  - (b) there is prima facie evidence that the applicant or at least some of the native title group have a connection by their traditional laws and customs with the land or waters in question; and
  - (c) there is not unequivocal evidence that all of those native title rights and interests have been extinguished; and
  - (d) either:
    - (i) the likely amount of the compensation is not expected to exceed the likely cost of maintaining and prosecuting the claim in the Court by more than 50%;
    - or

- (ii) the likely amount of that compensation available to the native title group is unlikely to exceed \$50,000 (or a greater prescribed amount); and
  - (e) the claim can be dealt with more efficiently, cost effectively and expeditiously by the Tribunal than by the Court.
- (3) If the Court directs that the claim be referred to the Tribunal, the Tribunal may:
- (a) make a finding that native title rights and interests exist or existed for the purposes of determining compensation where the Tribunal is so satisfied, on a prima facie basis; and
  - (b) adopt such procedures as it wishes in relation to the determination of value of compensation payable, including obtaining evidence at its own expense and limiting the extent to which expert evidence may be tendered and may be the subject of challenge by parties other than the claimants; and
  - (c) determine the compensation payable.
- (4) The Tribunal must not make a determination of the kind mentioned in paragraph (3)(c) if the party that would be responsible for paying the compensation proves that the native title rights and interests did not exist.
- (5) If a claim is referred to the Tribunal by the Court in accordance with this section, the Tribunal:
- (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) must formulate its own procedures so as to minimise any legal expenses involved for the parties; and
  - (c) may direct the Government party to meet any reasonable costs of the claimants as seem appropriate, including the costs of obtaining expert evidence as to value; and
  - (d) must take account of the cultural and customary concerns of Aboriginal people and Torres Strait Islanders; and
  - (e) may include in the compensation payable any reasonable costs incurred by the claimants.

### ***Validation***

#### **Govt (1)**

Schedule 1, item 9, page 6 (line 13), omit the heading to Division 2A, substitute:

#### **Division 2A—Validation of intermediate period acts etc.**

#### **Govt (2)**

Schedule 1, item 9, page 7 (line 16), omit “(3), (4) or (6)”, substitute “(3) or (4)”.

**Govt (3)**

Schedule 1, item 9, page 9 (after line 6), at the end of Subdivision B, add:

**22EA Requirement to notify: mining rights**

(1) If:

- (a) an act that is attributable to the Commonwealth consists of:
  - (i) the creation of a right to mine; or
  - (ii) the variation of such a right to extend the area to which it relates; or
  - (iii) the extension of the period for which such a right has effect, other than under an option or right of extension or renewal created by the lease, contract or other thing whose grant or making created the right to mine; and
- (b) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996; and
- (c) at any time before the act was done, either:
  - (i) a grant of a freehold estate or a lease was made covering any of the land or waters affected by the act; or
  - (ii) a public work was constructed or established on any of the land or waters affected by the act;

the Commonwealth must, before the end of 6 months after this section commences:

- (d) give notice containing the details set out in subsection (2) to any registered native title body corporate, any registered native title claimant and any representative Aboriginal/Torres Strait Islander body, in relation to any of the land or waters affected by the act; and
- (e) notify the public in the determined way of the details set out in subsection (2).

*Details*

(2) The details are:

- (a) the date on which the act was done; and
- (b) the kind of mining involved; and
- (c) sufficient information to enable the area affected by the act to be identified; and
- (d) information about the way in which further details about the act may be obtained.

**Govt (4)**

Schedule 1, item 9, page 9 (after line 27), at the end of Subdivision C, add:

**22H Requirement to notify: mining rights**

(1) If:

- (a) an act that is attributable to a State or Territory consists of:
  - (i) the creation of a right to mine; or
  - (ii) the variation of such a right to extend the area to which it relates; or
  - (iii) the extension of the period for which such a right has effect, other than under an option or right of extension or renewal created by the lease, contract or other thing whose grant or making created the right to mine; and
- (b) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996; and
- (c) at any time before the act was done, either:
  - (i) a grant of a freehold estate or a lease was made covering any of the land or waters affected by the act; or
  - (ii) a public work was constructed or established on any of the land or waters affected by the act;

the State or Territory must, before the end of 6 months after the commencement of the law of the State or Territory that validates intermediate period acts attributable to the State or Territory in accordance with section 22F:

- (d) give notice containing the details set out in subsection (2) to any registered native title body corporate, any registered native title claimant and any representative Aboriginal/Torres Strait Islander body, in relation to any of the land or waters affected by the act; and
- (e) notify the public in the determined way of the details set out in subsection (2).

*Details*

(2) The details are:

- (a) the date on which the act was done; and
- (b) the kind of mining involved; and
- (c) sufficient information to enable the area affected by the act to be identified; and
- (d) information about the way in which further details about the act may be obtained.

**Govt (50)**

Schedule 1, item 39, page 126 (lines 14 and 15), omit “beginning on 1 January 1994 and ending on 23 December 1996”, substitute “from the beginning of 1 January 1994 until the end of 23 December 1996”.

**Govt (51)**

Schedule 1, item 39, page 128 (line 16) to page 129 (line 6), omit subsections (5) and (6).

**Govt (52)**

Schedule 1, item 39, page 129 (lines 11 to 16), omit subsection (8), substitute:

- (8) An intermediate period act is not a *category A intermediate period act* if it is:
- (a) the grant or vesting of any thing that is made or done by or under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
  - (b) the grant or vesting of any thing to or in a person to hold on trust for the benefit of Aboriginal peoples or Torres Strait Islanders; or
  - (c) the grant or vesting of any thing over particular land or waters, if at the time a thing covered by paragraph (a) or (b) is in effect in relation to the land or waters.

**Govt (53)**

Schedule 1, item 39, page 129 (after line 28), at the end of paragraph (b), add:

- ; or (iii) a lease granted to a person to hold on trust for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (iv) any other lease granted over particular land or waters, if at the time a lease covered by subparagraph (ii) or (iii) is in force over the land or waters.

***Renewals and extensions*****Govt (25A)**

Schedule 1, item 9, page 55 (line 17), before “in giving”, insert “in good faith”.

**Govt (25B)**

Schedule 1, item 9, page 58 (after line 17), at the end of section 24ID, add:

***Notification***

- (3) If paragraph 24IB(b) applied in relation to the future act, then, before the act is done, the person proposing to do the act must:
- (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native

title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act that the act, or acts of that class, are to be done in relation to the land or waters concerned; and

- (b) give them an opportunity to comment on the act or class of acts.

### **Harradine (14)**

Schedule 1, item 9, page 57 (lines 16 to 19), omit paragraphs (4)(b) and (c).

### **Harradine (15)**

Schedule 1, item 9, page 57 (lines 31 and 32), omit “is likely to”, substitute “will”.

### ***Right to negotiate***

#### **Govt (35)**

Schedule 1, page 79 (line 4), after “washing”, insert “or an aeration”.

#### **Govt (36)**

Schedule 1, item 9, page 81 (lines 14 to 23), omit subsection (1), substitute:

#### *Mining other than exploring or prospecting*

- (1) This Subdivision does not apply to an act consisting of the creation or variation of a right to mine, if the right, as so created or varied:
  - (a) is not a right to explore or prospect; and
  - (b) relates solely to land or waters wholly within an approved opal or gem mining area (see subsection (2)); and
  - (c) allows:
    - (i) mining (other than puddling) only for opals or gems; or
    - (ii) mining consisting of puddling in respect of opals or gems; and
  - (d) allows that mining only in an area no larger than 5 hectares; and
  - (e) is conferred for a period of no more than 5 years; and
  - (f) if the right is able to be renewed one or more times—is able to be renewed for no more than 5 years each time.

#### *Exploring or prospecting*

- (1A) This Subdivision also does not apply to an act consisting of the creation or variation of a right to mine that is a right to explore or prospect, if the right, as so created or varied:
  - (a) relates solely to land or waters wholly within an approved opal or gem mining area (see subsection (2)); and

- (b) allows exploration or prospecting only for opals or gems; and
- (c) allows that exploration or prospecting in an area no larger than 500 hectares; and
- (d) is conferred for a period of no more than 5 years; and
- (e) if the right is able to be renewed one or more times—is able to be renewed for no more than 5 years each time.

**Govt (36A)**

Schedule 1, item 9, page 81 (line 25), omit “(3) to (5)”, substitute “(3) to (5A)”.

**Govt (37)**

Schedule 1, item 9, page 82 (lines 5 to 16), omit subsection (4), substitute:

*Second condition*

- (4) The second condition is that the Commonwealth Minister is satisfied, having regard to:
  - (a) any mining rights conferred in the past in the area; and
  - (b) any other relevant matter;that in the future at least some rights will be conferred to mine in the area that will:
  - (c) allow:
    - (i) mining for opals or gems (other than mining consisting of exploring, prospecting or puddling) only in an area no larger than 5 hectares; or
    - (ii) mining consisting of puddling in respect of opals or gems only in an area no larger than 5 hectares; or
    - (iii) mining consisting of exploration or prospecting for opals or gems in an area no larger than 500 hectares; and
  - (d) be conferred for a period of no more than 5 years; and
  - (e) if the rights are renewed one or more times—be renewed for a period of no more than 5 years each time.

**Govt (37A)**

Schedule 1, item 9, page 82 (after line 30), after subsection (5), insert:

*Fourth condition*

- (5A) The fourth condition is that the Commonwealth Minister is satisfied that mining for opals or gems is currently being carried on in the whole or a substantial part of the area.

**Govt (37B)**

Schedule 1, item 9, page 83 (line 4), omit “(3) to (5)”, substitute “(3) to (5A)”.

**Govt (38)**

Schedule 1, item 9, page 86 (line 1), omit “3 months”, substitute “4 months”.

**Govt (39)**

Schedule 1, item 9, page 89 (lines 16 to 24), omit paragraphs (a) and (b), substitute:

- (a) any person who, 4 months after the notification day (see subsection 29(4)), is a registered native title claimant in relation to any of the land or waters that will be affected by the act, so long as:
  - (i) the application containing the claim was filed in the Federal Court, or given to the recognised State/Territory body, before the end of 3 months after the notification day; and
  - (ii) the claim related to any of the land or waters that will be affected by the act;

Note: The note to subparagraph 29(2)(b)(i) explains who can be a registered native title claimant.

- (b) any body corporate that, 3 months after the notification day, is a registered native title body corporate in relation to any of the land or waters that will be affected by the act;

**Govt (40)**

Schedule 1, item 9, page 91 (line 16), omit "3 months", substitute "4 months".

**Govt (41)**

Schedule 1, item 9, page 93 (line 12), omit "3 months", substitute "4 months".

**Govt (42)**

Schedule 1, item 9, page 95 (line 4), omit "4 months", substitute "6 months".

**Govt (55)**

Schedule 1, item 50, page 135 (lines 18 to 27), omit subsection (3), substitute:

*Areas in the Northern Territory*

- (3) Subject to subsection (4), a particular area in the Northern Territory is a **town or city** if, as at 23 December 1996, it was:
  - (a) gazetted as a town, other than the town of Darwin, under subsection 95(1) of the *Crown Lands Act* of the Northern Territory; or
  - (b) the area in the Schedule to the *Darwin Lands Acquisition Act 1945* of the Commonwealth; or
  - (c) within a municipality constituted under section 29 of the *Local Government Act* of the Northern Territory.

**Opp (112)**

Schedule 1, item 9, page 73 (lines 15 to 17), omit "the Commonwealth, the State or the Territory, the intended beneficiary of the act and any registered native title bodies corporate and registered native title claimants", substitute "the parties".

**Opp (113)**

Schedule 1, item 9, page 74 (lines 15 to 22), omit subparagraph (iii), substitute:

- (iii) the compulsory acquisition of native title rights and interests, if a purpose of the acquisition is to confer rights or interests in relation to the land or waters concerned on persons other than the Government party; or

**Opp (R114)**

Schedule 1, item 9, page 74 (after line 28), after subsection (1), insert:

- (1A) A compulsory acquisition will be deemed to be an acquisition involving a conferral of interests on persons other than the Government party, unless it is stated in writing to be for a Government purpose.

**Opp (R115)**

Schedule 1, item 9, page 75 (lines 1 and 2), omit paragraph (b).

**Opp (118)**

Schedule 1, item 9, page 75 (line 12), omit “sections 43 and 43A”, substitute “section 43”.

**Opp (120)/Dems-GWA (110)**

Schedule 1, item 9, page 75 (line 21) to page 78 (line 15), omit section 26A.

**Opp (124)**

Schedule 1, item 9, page 83 (lines 14 to 27), omit subsection (1).

**Opp (124A)**

Schedule 1, item 9, page 56 (after line 27), after subsection (1), insert:

- (1A) This section does not apply where the original lease etc. is the creation of a right to mine, whether by the grant of a mining lease or otherwise.

**Opp (125)**

Schedule 1, item 9, page 84 (line 5), omit “, (g) or (h)”.

**Opp (126)**

Schedule 1, item 9, page 84 (lines 7 to 11), omit paragraph (c), substitute:

- (c) the agreement mentioned in paragraph 28(1)(f) provided:
  - (i) an express understanding that there would be no further negotiation before the later act took place; and
  - (ii) that, if the later act were done, certain conditions would be complied with by parties other than native title parties (whether before or after the act was done); and

**Opp (127)**

Schedule 1, item 9, page 84 (after line 14), at the end of section 26D, add:

*Exception*

- (3) However, the exclusion provided by this section does not apply if the agreement with respect to the earlier act provides for or permits the application of this Subdivision to the later act.

**Opp (129)**

Schedule 1, item 9, page 86 (line 18), omit “34A,”.

**Opp (130)**

Schedule 1, item 9, page 86 (after line 33), at the end of section 28, add:

- (3) A person wishing to lodge a native title determination application under section 61 may apply to the Federal Court for an order prohibiting the doing or continuation of any act to which this Subdivision applies on the basis that section 29 has not been complied with.

**Opp (131)**

Schedule 1, item 9, page 88 (line 25), after “notice”, insert “, but only if all of the acts are in relation to land or waters in which each of the parties referred to in paragraphs (2)(a) and (b) has an interest”.

**Opp (134)**

Schedule 1, item 9, page 93 (after line 4), at the end of section 33, add:

- (3) If the negotiations are with respect to a right the creation of which may constitute an earlier act for the purposes of section 26D, the negotiations may include the possibility that:
- (a) any agreement which results will provide for further negotiations in respect of an act that constitutes a later act for the purposes of that section; or
  - (b) this Subdivision will apply to the later act.
- (4) Proceedings may be taken in the Federal Court in relation to an agreement reached under section 31 pursuant to negotiations about matters referred to in subsection (3):
- (a) for specific performance of the agreement; or
  - (b) for a declaration that the conditions of the agreement agreed to by non-native title parties have not been complied with; or
  - (c) for an injunction or prohibition restraining those parties from continuing to do things under the act or the later act; or
  - (d) for damages for the doing of the things or for a failure to comply with the conditions, or both.

**Opp (135)**

Schedule 1, item 9, page 93 (line 8), omit “34A,”.

**Opp (139)**

Schedule 1, item 9, page 95 (lines 8 and 9), omit paragraph (c).

**Opp (140)**

Schedule 1, item 9, page 95 (line 12), omit “34A.”

**Opp (141)**

Schedule 1, item 9, page 95 (after line 13), at the end of section 35, add:

- (3) An application to the arbitral body does not preclude further negotiations referred to in paragraph 31(1)(b) and, if the arbitral body is given a copy of an agreement resulting from the negotiations (see section 41A) before it makes a determination, the application is taken to have been withdrawn unless the negotiation parties advise the arbitral body that a determination may still be made.

**Opp (143)**

Schedule 1, item 9, page 96 (line 14), omit “*Relevant*”, substitute “*Commonwealth*”.

**Opp (144)**

Schedule 1, item 9, page 96 (lines 21 and 22), omit paragraph (c).

**Opp (145)**

Schedule 1, item 9, page 96 (line 24), omit “relevant”, substitute “Commonwealth”.

**Opp (146)**

Schedule 1, item 9, page 96 (line 27), omit “relevant”, substitute “Commonwealth”.

**Opp (147)**

Schedule 1, item 9, page 96 (line 28), omit “relevant”, substitute “Commonwealth”.

**Opp (148)**

Schedule 1, item 9, page 97 (lines 1 to 13), omit paragraphs (2)(b) and (c) and subsection (3), substitute:

- (b) it is in the national interest to make the determination at that time.

**Opp (149)**

Schedule 1, item 9, page 97 (line 14), omit “34A or”.

**Opp (150)**

Schedule 1, item 9, page 97 (line 15), omit “34A or”.

**Opp (151)**

Schedule 1, item 9, page 97 (line 16), omit “relevant”, substitute “Commonwealth”.

**Opp (152)**

Schedule 1, item 9, page 97 (lines 20 to 22), omit paragraph (a).

**Opp (153)**

Schedule 1, item 9, page 97 (line 24), omit “relevant”, substitute “Commonwealth”.

**Opp (154)**

Schedule 1, item 9, page 98 (line 2), omit “relevant”, substitute “Commonwealth”.

**Opp (155)**

Schedule 1, item 9, page 98 (line 22), omit “relevant”, substitute “Commonwealth”.

**Opp (156)**

Schedule 1, item 9, page 98 (line 27), omit “relevant”, substitute “Commonwealth”.

**Opp (157)**

Schedule 1, item 9, page 98 (line 29), omit “relevant”, substitute “Commonwealth”.

**Opp (158)**

Schedule 1, item 9, page 98 (line 31), omit “relevant”, substitute “Commonwealth”.

**Opp (159)**

Schedule 1, item 9, page 99 (line 13), omit “**34A and**”.

**Opp (160)**

Schedule 1, item 9, page 99 (line 17), omit “34A or”.

**Opp (161)**

Schedule 1, item 9, page 99 (line 21), omit “relevant”, substitute “Commonwealth”.

**Opp (162)**

Schedule 1, item 9, page 99 (line 30), omit “relevant”, substitute “Commonwealth”.

**Opp (163)**

Schedule 1, item 9, page 100 (line 2), omit “relevant”, substitute “Commonwealth”.

**Opp (164)**

Schedule 1, item 9, page 100 (line 20), omit “relevant”, substitute “Commonwealth”.

**Opp (165)**

Schedule 1, item 9, page 100 (line 28) to page 101 (line 5), omit subsection (7), substitute:

- (7) The Commonwealth Minister must, as soon as practicable after making a determination, and in any case within 15 sitting days, cause a copy of the determination, together with reasons for the determination, to be laid before each House of the Parliament.

**Opp (166)**

Schedule 1, item 9, page 101 (line 11), omit “34A or”.

**Opp (167)**

Schedule 1, item 9, page 101 (after line 18), after subsection (1), insert:

(1A) A determination may, with the agreement of the parties, provide that particular matters that:

(a) are not reasonably capable of being determined at the time the determination is made; and

(b) are not directly relevant to the doing of the act;  
are to be the subject of further negotiations or determined in a specified manner.

(1B) If the matter is to be determined by arbitration otherwise than by the arbitral body, the parties must agree to the manner of determination or, in the absence of agreement, the matter must be determined by the arbitral body at an appropriate time.

Example 1: A mining lease may be granted subject to quantification of compensation etc. at a later time by an independent arbitrator.

Example 2: A mining lease may be granted subject to site clearance procedures to be determined by a third person.

**Opp (170)**

Schedule 1, item 9, page 101 (after line 27), at the end of section 38, add:

(3) If the act is with respect to a right the creation of which may constitute an earlier act for the purposes of section 26D, the determination may include a condition that:

(a) will provide for further negotiations in respect of an act that constitutes a later act for the purposes of that section; or

(b) will provide that this Subdivision will apply to the later act.

(4) Proceedings may be taken in a Court of a State or Territory in relation to a determination under this section:

(a) for specific performance of a condition of the determination;  
or

(b) for a declaration that the conditions of the determination have not been complied with by non-native title parties; or

(c) for an injunction or prohibition restraining those parties from continuing to do things under the act or the later act; or

(d) for damages for the doing of the things or for a failure to comply with the conditions, or both.

**Opp (172)**

Schedule 1, item 9, page 102 (lines 24 and 25), omit paragraph (d).

**Opp (173)**

Schedule 1, item 9, page 103 (after line 28), at the end of section 40, add:

- (2) Subsection (1) does not apply to an indigenous land use agreement, or an agreement in writing referred to in section 34, that identifies the agreement or determination affected.

**Opp (174)**

Schedule 1, item 9, page 104 (line 30), omit “34A or”.

**Opp (175)**

Schedule 1, item 9, page 107 (line 19), after “corporate,” insert “representative bodies.”

**Opp (176)**

Schedule 1, item 9, page 108 (lines 22 and 23), omit “34A or 36A, or both,” substitute “36A”.

**Opp (177)**

Schedule 1, item 9, page 108 (lines 31 and 32), omit “, or such longer period as the Commonwealth Minister allows.”

**Opp (R197)**

Schedule 1, item 34, page 125 (line 5), omit “26A(1).”

**Opp (198)**

Schedule 1, item 34, page 125 (line 6), omit “or 43A(1)(b)”.

**Opp (201)**

Schedule 1, item 34, page 125 (lines 7 to 9), omit “or paragraph (i) of the definition of *infrastructure facility* in section 253”.

**Opp (R202)**

Schedule 1, item 34, page 125 (line 12), omit “26A(8).”

**Opp (203)**

Schedule 1, item 34, page 125 (line 13), omit “, 43(3) or 43A(6)”, substitute “or 43(3)”.

**Opp (R209)**

Schedule 1, item 42, page 130 (lines 25 to 27), omit the item, substitute:

**42 Paragraph 237(a)**

Omit “does not directly interfere with the community life”, substitute “does not interfere directly with the actual functioning of the way of life of the community”.

**Opp (210)**

Schedule 1, items 43 and 44, page 130 (line 28) to page 131 (line 2), omit the items, substitute:

**43 At the end of section 237**

Add:

- (2) If the act creates rights in persons other than those who are or may be native title holders in relation to the land or waters concerned, the following must be taken into account:

- (a) the terms and conditions contained in any relevant grant, licence, permission or authority;
  - (b) the legislation governing their creation;
  - (c) the possible activities that would be authorised by their creation.
- (3) In deciding whether an act involves a major disturbance as mentioned in paragraph (1)(c), the beliefs and concerns of the native title claim group must be considered.

**Opp (221)/Dems-GWA (188)**

Schedule 1, item 57, page 137 (line 19) to page 138 (line 9), omit the item.

**Opp (287)**

Schedule 2, item 78, page 206 (table), omit the item relating to infrastructure facility.

**Opp (354)**

Schedule 5, item 11, page 335 (line 32), omit “34A,”.

**Opp (355)**

Schedule 5, item 11, page 336 (lines 7 and 8), omit “or 43A(8)”.

**Dems-GWA (106)**

Schedule 1, item 9, page 75 (lines 7 and 8), omit “renewals of valid mining leases etc.”, substitute “a right to mine following a right to explore or prospect”.

**Dems-GWA (126)**

Schedule 1, item 9, page 93 (line 9), after “38”, insert “, unless the parties to the agreement agree in writing that the determination should not have effect, or should have effect as modified by the agreement, in which case the determination has no effect, or is effective as so modified”.

**Dems-GWA (132) [as amended by Opp (R142)]**

Schedule 1, item 9, page 95 (line 14) to page 96 (line 11), omit section 36, substitute:

**36 Determination to be made within specified period**

- (1) Subject to section 37, the arbitral body must take all reasonable steps to make a determination in relation to the act within:
  - (a) if the act is the grant of a licence to prospect or explore for things that may be mined—the period of 4 months starting when the application is made; or
  - (b) in any other case—the period of 6 months starting when the application is made.
- (2) The arbitral body must not make a determination that the act may be done unless it is satisfied that the Government and grantee parties negotiated in good faith as required by subsection 31(1).

- (3) If the arbitral body is the NNTT and it does not make the determination within the period, it must, as soon as is reasonably practicable after the end of the period, advise the Commonwealth Minister in writing of the reason for it not doing so.

*Commonwealth Minister may give notice as to urgency*

- (4) At any time after the end of the period applicable under subsection (1) in respect of an application under section 35 that has not been withdrawn, and before either:
- (a) the negotiation parties have made an agreement of the kind mentioned in paragraph 31(1)(b); or
  - (b) the arbitral body has made a determination under section 38;
- the Commonwealth Minister may give a written notice to the arbitral body requesting the arbitral body to make such a determination within the period specified in the notice. The period must end not earlier than 30 days after the day on which the notice was given.

**Harradine (23)**

Schedule 1, item 9, page 75 (lines 10 and 11), omit paragraph (f).

**Harradine (25)**

Schedule 1, item 9, page 84 (after line 3), after paragraph 26D(2)(a), insert:

- (aa) the earlier act took place after the commencement of this Act;  
and

**Harradine (26)/Opp (137)/Dems-GWA (127)**

Schedule 1, item 9, page 93 (line 10) to page 94 (line 31), omit section 34A.

**Harradine (27)**

Schedule 1, item 9, page 95 (line 25), omit "4 months", substitute "6 months".

**Harradine (28)**

Schedule 1, item 9, page 96 (line 10), omit "4 months", substitute "6 months".

**Harradine (31)/Opp (178)/Dems-GWA (146)**

Schedule 1, item 9, page 109 (line 6) to page 113 (line 2), omit sections 43A and 43B.

**Harradine (33)**

Schedule 1, item 34, page 125 (line 7), omit ", 251C(4) or (5)".

**Harradine (34)**

Schedule 1, item 50, page 134 (line 20) to page 136 (line 7), omit section 251C.

**Harradine (35)**

Schedule 2, item 78, page 208 (table), omit the item relating to town or city.

***Freehold test***

**Govt (28)**

Schedule 1, item 9, page 67 (after line 15), after paragraph (b), insert:

- and (ba) the practices and procedures adopted in acquiring the native title rights and interests are not such as to cause the native title holders any greater disadvantage than is caused to the holders of non-native title rights and interests when their rights and interests are acquired;

**Govt (29)**

Schedule 1, item 9, page 68 (lines 16 to 19), omit subparagraph (a)(i), substitute:

- (i) if a law of the Commonwealth provides that a person other than the Crown in right of the Commonwealth is liable to pay the compensation—that person; or

**Govt (30)**

Schedule 1, item 9, page 68 (lines 22 to 25), omit subparagraph (4)(b)(i), substitute:

- (i) if a law of the State or Territory provides that a person other than the Crown in any capacity is liable to pay the compensation—that person; or

**Harradine (18)**

Schedule 1, item 9, page 67 (line 13), omit “(whether compulsorily or otherwise)”, substitute “compulsorily”.

**Harradine (21)**

Schedule 1, item 9, page 70 (line 30), omit “(whether compulsorily or otherwise)”, substitute “compulsorily”.

***Confirmation of extinguishment***

**Govt (5)**

Schedule 1, item 9, page 11 (line 27) to page 12 (line 16), omit subsections (4) and (5).

**Govt (6)**

Schedule 1, item 9, page 12 (lines 17 to 32), omit subsection (6).

**Govt (7)**

Schedule 1, item 9, page 13 (lines 7 to 28), omit subsection (8).

**Govt (9)**

Schedule 1, item 9, page 14 (line 8), omit “, (4) or (5)”.

**Govt (10)**

Schedule 1, item 9, page 14 (lines 8 and 9), omit “or under subsection 23B(6)”.

**Govt (11)**

Schedule 1, item 9, page 14 (line 17), omit “or (8) (which deal with public works)”, substitute “(which deals with public works)”.

**Govt (11A)**

Schedule 1, item 9, page 16 (line 11), before “in giving”, insert “in good faith”.

### **Govt (12)**

Schedule 1, item 9, page 17 (after line 2), at the end of subsection (1), add:

- ; and (d) to the extent that the act involves the grant of rights and interests that are not inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned, the rights and interests granted, and the doing of any activity in giving effect to them, prevail over the native title rights and interests but do not extinguish them.

### **Govt (12A)**

Schedule 1, item 9, page 17 (after line 22), after section 23H, insert:

#### **23HA Notification**

In the case of a previous non-exclusive possession act to which subparagraph 23F(3)(c)(ii) applies:

- (a) notice must be given, in the way determined in writing by the Commonwealth Minister, to any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act about the doing or proposed doing of the act, or acts of that class, in relation to the land or waters concerned; and
- (b) they must be given an opportunity to comment on the act or class of acts.

### **Govt (12B)**

Schedule 1, item 9, page 17 (lines 26 and 27), omit “a provision to the same effect as section 23H”, substitute “provisions to the same effect as sections 23H and 23HA”.

### **Govt (45R)**

Schedule 1, page 118 (after line 4), after item 12, insert:

#### **12A After section 47**

Insert:

#### **47A Reserves etc. covered by claimant applications**

*When section applies*

- (1) This section applies if:
  - (a) a claimant application is made in relation to an area; and
  - (b) when the application is made:
    - (i) a freehold estate exists, or a lease is in force, over the area or the area is vested in any person, if the grant of the freehold estate or lease or the vesting took place under legislation that makes provision for the grant or

- vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (ii) the area is held on trust, or is reserved, for the benefit of Aboriginal peoples or Torres Strait Islanders; and
- (c) when the application is made, one or more members of the native title claim group occupy the area.

*Prior extinguishment to be disregarded*

- (2) For all purposes under this Act in relation to the application, any extinguishment, of the native title rights and interests in relation to the area that are claimed in the application, by any of the following acts must be disregarded:
- (a) the grant or vesting mentioned in subparagraph (1)(b)(i) or the creation of the trust or reservation mentioned in subparagraph (1)(b)(ii);
- (b) the creation of any other prior interest in relation to the area, other than, in the case of an area held on trust as mentioned in subparagraph (1)(b)(ii), the grant of a freehold estate.

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

*Effect of determination*

- (3) If the determination on the application is that the native title claim group hold the native title rights and interests claimed:
- (a) the determination does not affect:
- (i) the validity of the grant or vesting or of the creation of the trust or reservation; or
- (ii) the validity of the creation of any other prior interest in relation to the area; or
- (iii) any interest of the Crown in any capacity, or of any statutory authority, in any public works on the land or waters concerned; and
- (b) the non-extinguishment principle applies to the grant or vesting or the creation of the trust or reservation or any other prior interest.

*Exclusion of Crown ownership of natural resources*

- (4) For the purposes of this section, a reference to the creation of an interest in relation to an area does not include a reference to the creation of an interest that confirms ownership of natural resources by, or confers ownership of natural resources on, the Crown in any capacity.

**47B Vacant Crown land covered by claimant applications***When section applies*

- (1) This section applies if:
- (a) a claimant application is made in relation to an area; and
  - (b) when the application is made, the area is not:
    - (i) covered by a freehold estate or a lease; or
    - (ii) covered by a reservation, proclamation, declaration, condition, permission or authority, made or conferred by the Crown in any capacity, or by the making, amendment or repeal of legislation of the Commonwealth, a State or a Territory, under which the whole or a part of the land or waters in the area is to be used for public purposes or for a particular purpose; or
    - (iii) subject to a resumption process (see paragraph (5)(b)); and
  - (c) when the application is made, one or more members of the native title claim group occupy the area.

*Prior extinguishment to be disregarded*

- (2) For all purposes under this Act in relation to the application, any extinguishment, of the native title rights and interests in relation to the area that are claimed in the application, by the creation of any prior interest in relation to the area must be disregarded.

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

*Effect of determination*

- (3) If the determination on the application is that the native title claim group hold the native title rights and interests claimed:
- (a) the determination does not affect:
    - (i) the validity of the creation of any prior interest in relation to the area; or
    - (ii) any interest of the Crown in any capacity, or of any statutory authority, in any public works on the land or waters concerned; and
  - (b) the non-extinguishment principle applies to the creation of any prior interest in relation to the area.

*Renewals and extensions of leases*

- (4) For the purposes of paragraph (1)(b), if, after a lease covering an area expires or is terminated, the lease is renewed, or its term is extended, the area is taken to be covered by the lease during the period between the expiry or termination and the renewal or extension.

*Defined expressions*

- (5) For the purposes of this section:
- (a) the **creation of a prior interest** in relation to an area does not include the creation of an interest that confirms ownership of natural resources by, or confers ownership of natural resources on, the Crown in any capacity; and
  - (b) an area is **subject to a resumption process** at a particular time (the **test time**) if:
    - (i) all interests last existing in relation to the area before the test time were acquired, resumed or revoked by, or surrendered to, the Crown in any capacity; and
    - (ii) when that happened, the Crown had a bona fide intention of using the area for public purposes or for a particular purpose; and
    - (iii) the Crown still had a bona fide intention of that kind in relation to the area at the test time.

**Govt (48)**

Schedule 1, page 124 (after line 20), after item 31, insert:

**31A After paragraph 212(2)(d)**

Insert:

- (da) stock-routes; or

**Govt (54)**

Schedule 1, item 49, page 133 (line 3), omit paragraph (1)(a), substitute:

- (a) anything set out in Schedule 1, other than:
  - (i) a mining lease; or
  - (ii) an interest created by or under legislation that creates interests only for the benefit of Aboriginal peoples or Torres Strait Islanders; or
  - (iii) an interest held by a person on trust for the benefit of Aboriginal peoples or Torres Strait Islanders; or
  - (iv) any other interest created in relation to particular land or waters, if at the time an interest covered by subparagraph (ii) or (iii) is held in relation to the land or waters; or

**Govt (56)**

Schedule 1, item 59, page 138 (line 21), omit “railway, bridge or stock-route”, substitute “railway or bridge”.

**Govt (57)**

Schedule 1, item 59, page 138 (after line 21), after subparagraph (a)(ii) of the definition of *public work*, insert:

- (iia) where the expression is used in or for the purposes of Division 2 or 2A of Part 2—a stock-route; or

**Govt (59)**

Schedule 2, item 19, page 146 (after line 25), at the end of section 61A, add:

*Section not to apply in section 47, 47A or 47B cases*

- (4) However, subsection (2) or (3) does not apply to an application if the only previous exclusive possession act or previous non-exclusive possession act concerned was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made.

**Govt (86)**

Schedule 4, item 1, page 276 (line 5), omit “50”, substitute “L”.

**Govt (87)**

Schedule 4, item 1, page 276 (line 10), after “13”, insert “or 38”.

**Govt (88)**

Schedule 4, item 1, page 276 (line 11), omit “or 38”.

**Govt (89)**

Schedule 4, item 1, page 276 (line 14), omit “50”, substitute “L”.

**Govt (90)**

Schedule 4, item 1, page 294 (line 2), omit “*Irrigation Areas (Land Settlement) Act 1933*”, substitute “*Irrigation Areas (Land Settlement) Act 1962*”.

**Govt (91)**

Schedule 4, item 1, page 294 (line 15), omit “*Irrigation Areas (Land Settlement) Act 1933*”, substitute “*Irrigation Areas (Land Settlement) Act 1962*”.

**Opp (216A) [as amended by Govt (54A)]**

Schedule 1, item 49, page 133 (lines 2 to 9), omit subsections (1) and (2), substitute:

A *Scheduled interest* is anything set out in Schedule 1, other than:

- (a) a mining lease; or  
 (b) an interest, in relation to land or waters, of a type declared by a regulation for the purposes of this paragraph not to be a Scheduled interest; or

- (c) an interest created by or under legislation that creates interests only for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (d) an interest held by a person on trust for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (e) any other interest created in relation to particular land or waters, if at the time an interest covered by paragraph (c) or (d) is held in relation to the land or waters.

### Dems-GWA

Schedule 1, item 9, page 13 (lines 29 to 34), omit subsection (9), substitute:

*Exclusion of acts benefiting Aboriginal peoples or Torres Strait Islanders*

- (9) An act is not a *previous exclusive possession act* if it is:
  - (a) the grant or vesting of any thing that is made or done by or under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
  - (b) the grant or vesting of any thing to or in a person to hold on trust for the benefit of Aboriginal peoples or Torres Strait Islanders; or
  - (c) the grant or vesting of any thing over particular land or waters, if at the time a thing covered by paragraph (a) or (b) is in effect in relation to the land or waters; or
  - (d) it is an act which takes place pursuant to a law of the Commonwealth, a State or a Territory that provides that native title is not extinguished by such acts or that any extinguishment by such acts is to be disregarded; or
  - (e) it is a grant of land made by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or
  - (f) this Act otherwise provides that the non-extinguishment principle applies.

*Effect of subsection (9) exclusion*

- (9A) To avoid doubt, the fact that an act is, because of subsection (9), not a previous exclusive possession act does not imply that the act is not valid.
- (9B) The non-extinguishment principle applies to the acts referred to in subsection (9).

### Dems-GWA

Schedule 1, item 49, page 133 (after line 9), at the end of section 249C, add:

- (3) In Schedule 1, a reference to a State or Territory Act or Ordinance is a reference to the Act or Ordinance as at 23 December 1996 or to an Act or Ordinance repealed or amended before that date.

**Harradine (2)**

Schedule 1, item 9, page 16 (line 24), omit “extinguishes”, substitute “suspends”.

**Harradine (3)**

Schedule 1, item 9, page 16 (line 30), omit “extinguished”, substitute “suspended”.

**Harradine (4)**

Schedule 1, item 9, page 17 (line 1), omit “extinguishment”, substitute “suspension”.

Note: The heading to section 23G (page 16, line 20) is altered by omitting “**partial extinguishment**” and substituting “**suspension**”.

***Racial Discrimination Act***

**Opp/Dems-GWA/AG**

Schedule 1, page 5 (after line 3), after item 2, insert:

**2A Subsection 7(1)**

Repeal the subsection, substitute:

*Relationship with RDA*

- (1) This Act is intended to be read and construed subject to the provisions of the *Racial Discrimination Act 1975*.

***Pastoral activities***

**Govt (19)**

Schedule 1, item 9, page 48 (line 17), omit “farmstay”, substitute “farm”.

Note: The heading to subsection 24GB(2) (page 48, line 14) is replaced by the heading “*Farm tourism included*”.

**Govt (20)**

Schedule 1, item 9, page 48 (line 23), omit “farmstay”, substitute “farm”.

**Govt (21)**

Schedule 1, item 9, page 48 (line 26) to page 49 (line 2), omit subsection (4), substitute:

*Certain acts not covered*

- (4) This section does not apply to a future act if:
- (a) where the lease covered by paragraph (1)(a) is a non-exclusive pastoral lease covering an area greater than 5,000 hectares—the act has the effect that the majority of the area

covered by the lease is used for purposes other than pastoral purposes; or

- (b) in any case—the act converts a lease covered by paragraph (1)(a) into a lease conferring a right of exclusive possession, or into a freehold estate, over any of the land or waters covered by the lease.

Note: If such an act is done in exercise of a legally conferred right, it could be covered by section 24ID. A lease conferring such rights or a freehold estate could be granted after a compulsory acquisition of native title under section 24MD or under certain indigenous land use agreements.

## Govt (22)

Schedule 1, item 9, page 49 (after line 15), at the end of section 24GB, add:

### *Notification*

(9) If:

- (a) the primary production activity mentioned in subparagraph (1)(d)(i) or (ii) is forest operations, a horticultural activity or an aquacultural activity; or
- (b) the lease mentioned in paragraph (1)(a) is a non-exclusive pastoral lease and the primary production activity mentioned in subparagraph (1)(d)(i) or (ii) is an agricultural activity;

before the future act is done, the person proposing to do the act must:

- (c) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the non-exclusive agricultural lease or non-exclusive pastoral lease that the act, or acts of that class, are to be done in relation to the particular land or waters; and
- (d) give them an opportunity to comment on the act or class of acts.

## Govt (23)

Schedule 1, item 9, page 50 (line 13), after “interests”, insert “, but does not extinguish them”.

## Govt (24)

Schedule 1, item 9, page 51 (line 2), omit paragraph (d), substitute:

- (d) the future act is not:
  - (i) the grant of a lease; or
  - (ii) any act that confers a right of exclusive possession over land; and

**Govt (24A)**

Schedule 1, item 9, page 51 (lines 3 and 4), omit “an activity”, substitute “grazing, or an activity consisting of or relating to gaining access to or taking water”.

**Govt (24B)**

Schedule 1, item 9, page 52 (after line 6), at the end of section 24GD, add:

*Notification*

- (6) Before the act is done, the person proposing to do the act must:
- (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act that the act, or acts of that class, are to be done in relation to the land or waters concerned; and
  - (b) give them an opportunity to comment on the act or class of acts.

**Opp (64)**

Schedule 1, item 9, page 52 (line 21), after “lease”, insert “or a mining lease”.

**Harradine (7)**

Schedule 1, item 9, page 48 (line 11), at the end of subsection (1), add:

- ; and (e) the future act could lawfully have been performed (with or without authorisation) on the lease prior to 23 December 1996.

**Harradine (R9)**

Schedule 1, item 9, page 51 (line 16), at the end of subsection (1), add:

- ; and (f) the future act takes place on land which has not been the subject of an approved determination of native title in respect of which the native title rights and interests include a right to exclusive possession of the land.

***Access rights*****Govt (43)**

Schedule 1, item 9, page 116 (after line 31), at the end of section 44F, add:

- Note: Persons wishing to make an indigenous land use agreement about access in general may request assistance from the NNTT or a recognised State/Territory body in negotiating the agreement: see sections 24BF, 24CF and 24DG.

**Opp (183)/Dems-GWA (151)**

Schedule 1, item 9, page 115 (lines 20 to 29), omit section 44C.

**Harradine (R55)**

Schedule 1, item 9, page 114 (after line 5), after subsection (3), insert:

- (3A) For the purposes of paragraph (3)(a), physical access to land is deemed to have been regular up to 23 December 1996 if the person, being a member of the native title claim group as at 23 December 1996, has not had regular physical access to the land by reason of an act of government or the person's having been denied physical access to the land by the lessee or someone acting on behalf of the lessee.

Mr Howard (Prime Minister) moved—That the following Senate amendments be disagreed to:

- (1) Opposition amendments—48A; 48B; 48C; 64; 100; 113; R114; R115; 118; 120/Dems-GWA (110); 124; 124A; 125 to 127; 129; 130; 134; 135; 139; 140; 143 to 167; 170; 172 to 174; 176; 177; 183/Dems-GWA (151); 192; R197; 198; 201; R202; 203; R209; 210; 216A [as amended by Govt (54A)]; 221/Dems-GWA (188); 223/Dems-GWA (190)/Harradine (1); 267 [as amended by Harradine amdt]; 287; 354; 355 and *Racial Discrimination Act-Opp/Dems-GWA/AG*;
- (2) Democrats-GWA amendments—106; 126; 132 [as amended by Opp (R142)]; Schedule 1, item 9, page 13, (lines 29 to 34), omit subsection (9), substitute subsections (9), (9A) and (9B) and Schedule 1, item 49, page 133, (after line 9), at the end of section 249C, add subsection (3);
- (3) GWA amendments—1 and 2; and
- (4) Harradine amendments—1; 2; 3; 4; 7; R9; 14; 23; 26/Opp (137)/Dems-GWA (127); 27; 28; 31/Opp (178)/Dems-GWA (146); 33; 34; 35 and R55.

Debate ensued.

Question—put.

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

## AYES, 82

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

## NOES, 43

Mr Adams	Ms Ellis	Mr Jones	Mr Mossfield
Mr Albanese	Mr G. J. Evans	Mr Latham	Mr O'Connor
Mr Andren	Mr M. J. Evans	Dr Lawrence	Mr O'Keefe
Mr Beazley	Mr L. D. T. Ferguson	Mr Lee	Mr Price
Mr Beddall	Mr M. J. Ferguson	Mr McClelland	Mr Sercombe*
Mr Bevis	Mr Fitzgibbon	Ms Macklin	Mr S. F. Smith
Mr Brereton	Mr E. L. Grace*	Mr McLeay	Mr Tanner
Mr Brown	Mr Griffin*	Mr McMullan	Mr K. J. Thomson
Mr Crean	Mr Hatton	Mr Martin	Mr Willis
Mrs Crosio	Mr Holding	Mr Melham	Mr Wilton
Mr Dargavel	Mr Jenkins	Mr A. A. Morris	

\* Tellers

And so it was resolved in the affirmative.

On the motion of Mr Williams (Attorney-General), the following Senate amendments were agreed to:

- (1) Government amendments—1 to 7; 9 to 11; 11A; 12; 12A; 12B; 13 to 24; 24A; 24B; 25; 25A; 25B; 26; 28 to 36; 36A; 37; 37A; 37B; 38 to 44; 45R; 46 to 48; 49R; 50 to 64 and 66 to 93;
- (2) Opposition amendments—112; 131; 141; 175; 184; 188; 230; 239; 242; 247; 248; 249; 262; 265; 312; 322; 332; 341; 342 and 344; and
- (3) Harradine amendments—15; 18; 21; 25 and 56.

On the motion of Mr Williams, the Bill was laid aside.

## 55 ADJOURNMENT

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

Question—put and passed.

And then the House, at 11.26 a.m., adjourned until Monday, 2 March 1998, at 12.30 p.m., in accordance with the resolution agreed to this sitting.

---

---

## PAPERS

The following papers were deemed to have been presented on 4 December 1997:

Migration Act—Certificate under section 502 14 November 1997.

Remuneration Tribunal Act—Determination 1997 No. 15.

Taxation Administration Act—Rulings 1997 Nos. TR 22, TR 23, TR 24.

*Telecommunications Act 1997—*

Instruments 11(2), 26(2) November 1997.

Standard 11 November 1997.

Regulation impact statement.

---

---

## ATTENDANCE

All Members attended (at some time during the sitting) except Mr P. J. Baldwin, Mrs Bishop, Mr Downer, Mr Kerr and Mr Randall.

**I. C. HARRIS**

Clerk of the House of Representatives

1996-97

**HOUSE OF REPRESENTATIVES**  
**SUPPLEMENT TO VOTES AND PROCEEDINGS**

No. 137

**MAIN COMMITTEE**

**MINUTES OF PROCEEDINGS**

**THURSDAY, 4 DECEMBER 1997**

---

1 The Main Committee met at 10 a.m.

**2 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—REPORT—SHARPENING THE FOCUS: SEMINAR ON THE SIMONS COMMITTEE REPORT—MOTION TO TAKE NOTE OF PAPER**

The order of the day having been read for the resumption of the debate on the motion of Mr Sinclair—That the House take note of the paper (*presented on 20 October 1997*), viz.:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report, October 1997—Sharpening the focus: Seminar on the Simons Committee report, 11 July 1997—

Debate resumed.

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

**3 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—REPORT—FROM EMPIRE TO PARTNERSHIP: SEMINAR ON THE COMMONWEALTH OF NATIONS—MOTION TO TAKE NOTE OF PAPER**

The order of the day having been read for the resumption of the debate on the motion of Mr Sinclair—That the House take note of the paper (*presented on 20 October 1997*), viz.:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report, October 1997—From Empire to partnership: Seminar on the Commonwealth of Nations, 20 August 1997—

Debate resumed.

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

**4 ELECTORAL MATTERS—JOINT STANDING COMMITTEE—REPORT ON ROLE OF THE AUSTRALIAN ELECTORAL COMMISSION IN CONDUCTING INDUSTRIAL ELECTIONS—MOTION TO TAKE NOTE OF PAPER**

The order of the day having been read for the resumption of the debate on the motion of Mr Nairn—That the House take note of the paper (*presented on 20 October 1997*), viz.:

Electoral Matters—Joint Standing Committee—Report, October 1997—Industrial elections: The role of the Australian Electoral Commission (AEC) in conducting industrial elections—

Debate resumed.

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

**5 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—REPORT ON AUSTRALIA'S RELATIONS WITH SOUTHERN AFRICA—GOVERNMENT RESPONSE—MOTION TO TAKE NOTE OF PAPER**

The order of the day having been read for the resumption of the debate on the motion of Mr Reith (Leader of the House)—That the House take note of the paper (*presented on 23 October 1997*), viz.:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report, November 1996—Australia's relations with Southern Africa—Government response, October 1997—

Debate resumed.

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

**6 COMMUNICATIONS, TRANSPORT AND MICROECONOMIC REFORM—STANDING COMMITTEE—REPORT ON REVIEW OF FEDERAL ROAD FUNDING—MOTION TO TAKE NOTE OF PAPER**

The order of the day having been read for the resumption of the debate on the motion of Mr Neville—That the House take note of the paper (*presented on 24 November 1997*), viz.:

Communications, Transport and Microeconomic Reform—Standing Committee—Report, October 1997—Planning not patching: An inquiry into Federal road funding—

Debate resumed.

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

**7 ADJOURNMENT**

On the motion of Mr Anthony, the Main Committee adjourned at 1.04 p.m.

---

**B. C. WRIGHT**  
Clerk of the Main Committee