

2002-03

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

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1 **MEETING OF SENATE**

The Senate met at 12.30 pm. The President (Senator the Honourable Paul Calvert) took the chair and read prayers.

2 **PRODUCT STEWARDSHIP (OIL) LEGISLATION AMENDMENT BILL (NO. 1) 2003**

Order of the day read for the adjourned debate on the motion of the Special Minister of State (Senator Abetz)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

The Senate resolved itself into committee for the consideration of the bill.

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*In the committee*

Bill, taken as a whole by leave, debated and agreed to.

Bill to be reported without amendment.

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The Acting Deputy President (Senator Ferguson) resumed the chair and the Chair of Committees (Senator Hogg) reported accordingly.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the report from the committee was adopted and the bill read a third time.

3 **ORDER OF BUSINESS—REARRANGEMENT**

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) moved—That government business order of the day no. 2 (Customs Tariff Amendment Bill (No. 2) 2003 and a related bill) be postponed till the next day of sitting.

Question put and passed.

4 **WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002**

Order of the day read for the adjourned debate on the motion of the Minister for the Arts and Sport (Senator Kemp)—That this bill be now read a second time.

Debate resumed.

*At 2 pm:* Debate was interrupted.

5 **QUESTIONS**

Questions without notice were answered.

**6 TRANSPORT—ETHANOL—ANSWERS TO QUESTIONS**

The Leader of the Opposition in the Senate (Senator Faulkner) moved—That the Senate take note of the answers given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) and the Minister for Finance and Administration (Senator Minchin) to questions without notice asked by Senators Faulkner, O'Brien and Stephens today relating to the subsidy on the production of ethanol.

Debate ensued.

Question put and passed.

**7 INDIGENOUS AUSTRALIANS—HEALTH—ANSWER TO QUESTION**

Senator Allison moved—That the Senate take note of the answer given by the Minister for Health and Ageing (Senator Patterson) to a question without notice asked by Senator Allison today relating to health care for Indigenous Australians.

Question put and passed.

**8 DEATH OF FORMER MEMBER THE HONOURABLE CHARLES KEITH JONES, AO**

The Deputy President (Senator Hogg) informed the Senate of the death, on 7 August 2003, of the Honourable Charles Keith Jones, AO, a member of the House of Representatives for the division of Newcastle from 1958 to 1983, and, at various times in that period, Minister for Transport and Minister for Civil Aviation.

The Leader of the Government in the Senate (Senator Hill), by leave, moved—That the Senate records its deep regret at the death, on 7 August 2003, of the Honourable Charles Keith Jones, AO, former federal minister and member for Newcastle, and places on record its appreciation of his long and meritorious public service and tenders its profound sympathy to his family in their bereavement.

The motion was supported and all senators present stood in silence—

Question passed.

**9 PETITION**

The following petition, lodged with the Clerk by Senator Bartlett, was received:

From 11 petitioners, requesting that the Senate support the Defence Amendment (Parliamentary approval for Australian involvement in overseas conflicts) Bill 2003.

**10 NOTICES**

*Notices of motion:*

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook): To move on the next day of sitting—That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 20 August 2003, from 7 pm to 10 pm, to take evidence for the committee's inquiry into an examination of the Government's foreign and trade policy strategy. (*general business notice of motion no. 514*)

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook): To move on the next day of sitting—That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on an examination of the Government's foreign and trade policy strategy be extended to 16 September 2003. (*general business notice of motion no. 515*)

The Chair of the Economics Legislation Committee (Senator Brandis): To move on the next day of sitting—That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 12 August 2003, from 5 pm, to take evidence for the committee's inquiries into the provisions of the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 and the provisions of the Financial Services Reform Amendment Bill 2003. (*general business notice of motion no. 516*)

The Chair of the Joint Standing Committee on the National Capital and External Territories (Senator Lightfoot): To move on the next day of sitting—That the Joint Standing Committee on the National Capital and External Territories be authorised to hold public meetings during the sittings of the Senate:

- (a) on Wednesday, 13 August 2003, from 6 pm to 8 pm, to take evidence for the committee's inquiry into pay parking in the parliamentary zone; and
- (b) on Thursday, 14 August 2003, from 10 am to 1 pm, to take evidence for the committee's inquiry into governance on Norfolk Island. (*general business notice of motion no. 517*)

The Chair of the Select Committee on Superannuation (Senator Watson): To move on the next day of sitting—That the Select Committee on Superannuation be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 13 August 2003, from 4 pm to 7 pm, to take evidence for the committee's inquiry into the draft Superannuation Industry (Supervision) Amendment Regulations 2003 and the draft Retirement Savings Accounts Amendment Regulations 2003. (*general business notice of motion no. 518*)

The Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Chapman): To move on the next day of sitting—That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Thursday, 14 August 2003, from 4.30 pm, to take evidence for the committee's inquiry into Australia's insolvency laws. (*general business notice of motion no. 519*)

Senator Brown: To move on the next day of sitting—That the Senate—

- (a) notes the international conference on West Papua being held in New Zealand in the lead up to the 2003 South Pacific Forum;
- (b) calls upon the Australian Government to support granting West Papuan leaders observer status at the forum;
- (c) urges members of the Pacific Islands Forum to remember the unresolved tragedy of the Pacific people of West Papua; and
- (d) urges the forum to support calls from the West Papua conference to:
  - (i) send a fact-finding mission to West Papua to investigate the human rights situation there, and
  - (ii) to press forum dialogue partner Indonesia to:
    - (A) end military operations in West Papua, and halt the activities of Laskar Jihad and all militia forces, and
    - (B) bring to justice those responsible for serious crimes committed in West Papua, including the killing of Papuan leader Theys Eluay in November 2001. (*general business notice of motion no. 520*)

Senator Brown: To move on 13 August 2003—That the Senate—

- (a) views, with due gravity, the mounting evidence for global warming including:
  - (i) a sea level rise of 10 to 20 centimetres since 1900,

- (ii) nine of the world's ten hottest years (since temperature records began) have occurred since 1990,
- (iii) the rapid melting of glaciers in Greenland, Alaska, and the Himalayas,
- (iv) the record frequency of tornadoes in the United States of America,
- (v) the average 1.2 degrees Celsius higher temperature across the Murray-Darling basin in the 2002-03 summer, worsening drought and bushfires, and
- (vi) Europe's heatwave;
- (b) recognises global warming's catastrophic potential for the Australian and global economies, society and environment;
- (c) accepts that global warming is being induced by human activity which is both identifiable and able to be modified; and
- (d) calls on the Prime Minister (Mr Howard) and his Cabinet to:
  - (i) acknowledge the need for much greater national action to curb the release of greenhouse gases from Australian sources, well beyond the goals of the Kyoto Protocol, and
  - (ii) take an urgent lead in the international effort to reverse global warming, including at the forthcoming Forum of South Pacific nations (some of which face obliteration from the rising sea levels). (*general business notice of motion no. 521*)

*Notices of motion withdrawn:*

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen), pursuant to notice of intention given on 26 June 2003, withdrew business of the Senate notice of motion no. 1 standing in his name for 6 sitting days after today for the disallowance of the Workplace Relations Amendment Regulations 2002 (No. 3), as contained in Statutory Rules 2002 No. 337 and made under the *Workplace Relations Act 1996*.

Senator Lees withdrew business of the Senate notice of motion no. 2 standing in her name for 19 August 2003, relating to the reference of a matter to the Finance and Public Administration References Committee.

*Intention to withdraw:* Senator Brown, pursuant to standing order 78, gave notice of his intention, before the resumption of business at 7.30 pm today, to withdraw business of the Senate notice of motion no. 1 standing in his name for today for the disallowance of the Space Activities Amendment Regulations 2003 (No. 1), as contained in Statutory Rules 2003 No. 33 and made under the *Space Activities Act 1998*.

#### 11 ECONOMICS LEGISLATION COMMITTEE—EXTENSIONS OF TIME TO REPORT

Senator Ferris, by leave and at the request of the Chair of the Economics Legislation Committee (Senator Brandis), moved—That the time for the presentation of reports of the committee be extended as follows:

- (a) Late Payment of Commercial Debts (Interest) Bill 2003—to 15 September 2003;
- (b) provisions of the Taxation Laws Amendment Bill (No. 5) 2003—to 21 August 2003; and
- (c) New Business Tax System (Taxation of Financial Arrangements) Bill (No. 1) 2003—to 13 August 2003.

Question put and passed.

**12 LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT**

Senator Mackay, by leave and at the request of the Chair of the Legal and Constitutional References Committee (Senator Bolkus), moved—That the time for the presentation of the report of the committee on progress towards national reconciliation be extended to 16 September 2003.

Question put and passed.

**13 AUSTRALIAN CRIME COMMISSION—JOINT STATUTORY COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator Ferris, by leave and on behalf of the Parliamentary Joint Committee on the Australian Crime Commission, moved—That the Parliamentary Joint Committee on the Australian Crime Commission be authorised to hold a public meeting during the sitting of the Senate today, from 8 pm to 10 pm, to take evidence for the committee's inquiry into the 2001-02 annual report of the National Crime Authority.

Question put and passed.

**14 POSTPONEMENTS**

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for 13 August 2003, relating to the disallowance of the Migration Amendment Regulations 2003 (No. 1), as contained in Statutory Rules 2003 No. 57, postponed till 19 August 2003.

Business of the Senate notice of motion no. 2 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for today, relating to the disallowance of items [2] to [6] of Schedule 1 of the Migration Agents Amendment Regulations 2003 (No. 1), postponed till 20 August 2003.

Business of the Senate notice of motion no. 3 standing in the name of Senator Tierney for today, relating to the reference of a matter to the Employment, Workplace Relations and Education References Committee, postponed till the first sitting day in 2004.

**15 NATIONAL ANIMAL WELFARE BILL 2003**

The Leader of the Australian Democrats (Senator Bartlett), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 493—That the following bill be introduced:

A Bill for an Act to promote humane, responsible and accountable care, protection and use of domestic animals, livestock, wildlife and animals kept for scientific purposes, and the standards required to achieve this end, and for related purposes.

Question put and passed.

Senator Bartlett presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Bartlett moved—That this bill be now read a second time.

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*Explanatory memorandum:* Senator Bartlett, by leave, tabled an explanatory memorandum relating to the bill.

Debate adjourned till the next day of sitting, Senator Bartlett in continuation.

**16 FOREIGN AFFAIRS—BURMA—DAW AUNG SAN SUU KYI**

Senator Brown amended his notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 513—That the Senate—

- (a) notes the ongoing imprisonment of Daw Aung San Suu Kyi and calls on the Minister for Foreign Affairs (Mr Downer) to urgently increase pressure on the military regime in Burma to release Daw Aung San Suu Kyi and to restore democracy; and
- (b) calls on the Government:
  - (i) to amend its policy of ‘constructive engagement’ with the current State Peace and Democracy Council (SPDC) regime in light of ongoing human rights abuses, and
  - (ii) to consider targeted sanctions against members of the SPDC regime, including restrictions on their international financial transactions, a freeze on assets overseas, and travel restrictions against senior members of the regime travelling to Australia.

Question put and passed.

**17 SCIENCE AND TECHNOLOGY—GENETICALLY-MODIFIED MATERIAL**

Senator Brown amended his notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 511—That the Senate—

- (a) notes:
  - (i) the Australian Broadcasting Corporation’s *7.30 Report* investigation into the planned field trials of a genetically-modified herpes virus to sterilise mice and thereby reduce their numbers,
  - (ii) that the mouse plague of 1993, which affected much of Victoria and South Australia, cost in the vicinity of \$65 million in lost rural production,
  - (iii) that mouse plagues often follow drought cycles, placing an extra burden on grain growers and users as they are trying to rebuild after drought, and
  - (iv) that earlier this year, the Commonwealth Scientific and Industrial Research Organisation (CSIRO) advised that the Wheat Streak Mosaic Virus which had been under experimentation by the CSIRO had escaped from CSIRO research facilities in Canberra and, further, that the CSIRO is unsure how and when the virus entered and escaped its facilities; and
- (b) calls on the Government not to release genetically-modified materials to sterilise pest species until the Parliament can be assured that other species, including native fauna and Australia’s human and livestock populations, are safe from their effects, and to ensure that research quarantine breaches such as that which occurred with the Wheat Streak Mosaic Virus at the CSIRO will not happen again.

Question put and passed.



**18 HEALTH—PAN PHARMACEUTICALS**

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 512—That the Senate calls on the Government to implement urgent measures to assist the complementary healthcare industry to recover from the effects of the Pan Pharmaceuticals affair, including streamlining of approvals to replace products.

Question put.

The Senate divided—

AYES, 8

Senators—

Allison (Teller)	Brown	Greig	Nettle
Bartlett	Cherry	Murray	Stott Despoja

NOES, 40

Senators—

Abetz	Cook	Johnston	Patterson
Barnett	Crossin	Kirk	Payne
Bishop	Denman	Ludwig	Ray
Boswell	Eggleston	Lundy	Sherry
Buckland (Teller)	Evans	Mackay	Stephens
Campbell, George	Ferguson	Marshall	Tchen
Carr	Forshaw	Mason	Tierney
Colbeck	Heffernan	McLucas	Watson
Collins	Hogg	Moore	Webber
Conroy	Hutchins	O'Brien	Wong

Question negatived.

**19 ANIMAL WELFARE—CATTLE TRANSPORTATION**

The Leader of the Australian Democrats (Senator Bartlett) amended his notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 491—That the Senate—

- (a) notes that:
  - (i) the June 2003 edition of the Australian Veterinary Association Journal contained a report from a veterinarian, Dr Petra Sidhom, entitled 'Welfare of cattle transported from Australia to Egypt',
  - (ii) the report described thousands of animals enduring overcrowded and filthy conditions and inadequate ventilation while aboard the livestock carriers at sea,
  - (iii) the report also detailed that those animals that did survive the journey to Egypt were, upon arrival, turned over to ill-prepared and inexperienced stockmen and slaughter men, resulting in extreme cruelty and suffering, and
  - (iv) the author's statement that she 'negotiated a range of measures to improve the situation with representatives of LiveCorp, but none has yet been put into practice';
- (b) condemns the Government for its failure to enforce minimum animal welfare standards in the live export industry; and
- (c) demands that the Government immediately:
  - (i) adopts the key recommendation of the Independent Reference Group and enforces a risk management approach to all live animal shipments,

- (ii) takes action against exporters responsible for repeated poor animal mortality events,
- (iii) improves support for the development of Australia's trade in chilled and frozen meat, and
- (iv) initiates consultation with countries importing Australian animals to ensure appropriate protocols for the handling and slaughter of animals are developed, implemented and enforced.

Question put and passed. The Leader of the National Party of Australia in the Senate (Senator Boswell), by leave, recorded his vote for the noes.

**20 SUPERANNUATION—SELECT COMMITTEE—REPORT—PLANNING FOR RETIREMENT**

The Acting Deputy President (Senator Ferguson) tabled the following report and documents received on 29 July 2003:

Superannuation—Select Committee—Planning for retirement—Report, dated July 2003, *Hansard* record of proceedings, documents presented to the committee and submissions [49].

Report ordered to be printed on the motion of Senator Eggleston.

**21 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE—GOVERNMENT RESPONSE—EDUCATION OF STUDENTS WITH DISABILITIES**

The Acting Deputy President (Senator Ferguson) tabled the following document received on 9 July 2003:

Employment, Workplace Relations and Education References Committee—Education of students with disabilities—Government response, dated July 2003.

**22 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—GOVERNMENT RESPONSE—AUSTRALIAN MEAT INDUSTRY CONSULTATIVE STRUCTURE AND QUOTA ALLOCATION**

The Acting Deputy President (Senator Ferguson) tabled the following document received on 29 July 2003:

Rural and Regional Affairs and Transport Legislation Committee—Australian meat industry consultative structure and quota allocation—Government response to reports.

**23 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—GOVERNMENT RESPONSE—QUOTA MANAGEMENT CONTROL ON AUSTRALIAN BEEF EXPORTS TO THE UNITED STATES**

The Acting Deputy President (Senator Ferguson) tabled the following document received on 29 July 2003:

Rural and Regional Affairs and Transport Legislation Committee—Quota management control on Australian beef exports to the United States—Government response.

**24 GOVERNMENT DOCUMENTS**

The Acting Deputy President (Senator Ferguson) tabled the following documents received on the dates indicated:

Gene Technology Regulator—Quarterly report for the period 1 January to 31 March 2003. [*Received 8 August 2003*]

*National Health Act 1953*—Report—Independent review of the private sector outreach services legislation, June 2003. [*Received 30 June 2003*]

*Research Involving Human Embryos Act 2002*—NHMRC Licensing Committee—Report for the period 19 December 2002 to 31 March 2003. [*Received 30 June 2003*]

**25 AUDITOR-GENERAL—AUDIT REPORTS NOS 59 TO 63 OF 2002-03 AND AUDIT REPORT NO. 1 OF 2003-04—DOCUMENTS**

The Acting Deputy President (Senator Ferguson) tabled the following documents received on the dates indicated:

Auditor-General—

Audit reports for 2002-03—

No. 59—Performance audit—Administration of Australian business number registrations: Australian Taxation Office. [*Received 27 June 2003*]

No. 60—Business support process audit—Closing the books. [*Received 27 June 2003*]

No. 61—Financial statement audit—Control structures as part of the audit of financial statements of major Commonwealth entities for the year ending 30 June 2003. [*Received 30 June 2003*]

No. 62—Performance audit—Management of selected aspects of the Family Migration Program: Department of Immigration and Multicultural and Indigenous Affairs. [*Received 30 June 2003*]

No. 63—Performance audit—Administration of the Automotive Competitiveness and Investment Scheme: Department of Industry, Tourism and Resources; Australian Customs Service. [*Received 30 June 2003*]

Audit report for 2003-04—No. 1—Performance audit—Administration of three key components of the Agriculture—Advancing Australia (AAA) package: Department of Agriculture, Fisheries and Forestry Australia; Centrelink; Australian Taxation Office. [*Received 31 July 2003*]

**26 SCIENCE AND TECHNOLOGY—PHOTOVOLTAIC ENERGY—DOCUMENT**

The Acting Deputy President (Senator Ferguson) tabled the following document:

Science and technology—Photovoltaic energy—Letter to the Deputy President (Senator Hogg) from the Minister for Innovation and Information Economy [Qld] (Mr Lucas) responding to the resolution of the Senate of 9 December 2002, dated 24 March 2003.

**27 ENVIRONMENT—TASMANIA—RECHERCHE BAY—DOCUMENT**

The Acting Deputy President (Senator Ferguson) tabled the following document:

Environment—Tasmania—Recherche Bay—Letter to the President of the Senate from the Premier of Tasmania (Mr Bacon) responding to the resolution of the Senate of 15 May 2003, dated 8 July 2003.

**28 ENVIRONMENT—CARBON DIOXIDE EMISSIONS—DOCUMENTS**

The Acting Deputy President (Senator Ferguson) tabled the following documents:

Environment—Carbon dioxide emissions—Letters to the President of the Senate from—

Chief Minister of the Australian Capital Territory (Mr Stanhope) responding to the resolution of the Senate of 24 June 2003, dated 14 July 2003.

Premier of Victoria (Mr Bracks) responding to the resolution of the Senate of 24 June 2003, dated 16 July 2003.

**29 TREATIES—JOINT STANDING COMMITTEE—REFERENCE—DOCUMENT**

The Acting Deputy President (Senator Ferguson) tabled the following document:

Treaties—Joint Standing Committee—Reference—Letter to the Clerk of the Senate from the Secretary, Joint Standing Committee on Treaties responding to the resolution of the Senate of 2 December 2002, dated 16 July 2003.

Senator Greig, by leave, moved—That the Senate take note of the document.

Question put and passed.

**30 ODGERS' AUSTRALIAN SENATE PRACTICE—10TH EDITION (SUPPLEMENT)—DOCUMENT**

The Acting Deputy President (Senator Ferguson) tabled the following document:

Odgers' Australian Senate Practice—10th edition (Centenary of Federation edition), 2001—Supplement—Updates to 30 June 2003.

**31 BUSINESS OF THE SENATE—1 JANUARY TO 30 JUNE 2003—DOCUMENT**

The Acting Deputy President (Senator Ferguson) tabled the following document:

Business of the Senate—1 January to 30 June 2003.

**32 QUESTIONS ON NOTICE—SUMMARY—DOCUMENT**

The Acting Deputy President (Senator Ferguson) tabled the following document:

Questions on notice—Summary for the period 12 February 2002 to 30 June 2003.

**33 DOCUMENTS**

The following documents were tabled by the Clerk:

A New Tax System (Australian Business Number) Act—Regulations—Statutory Rules 2003 No. 169.

A New Tax System (Goods and Services Tax) Act—Regulations—Statutory Rules 2003 No. 190.

Aboriginal and Torres Strait Islander Heritage Protection Act—Regulations—Statutory Rules 2003 No. 187.

Aged Care Act—

Committee Amendment Principles 2003 (No. 1).

Determination under section—

44-3—ACA Ch. 3 No. 8/2003.

44-6—ACA Ch. 3 No. 9/2003.

44-8A—ACA Ch. 3 No. 19/2003.

44-12—ACA Ch. 3 No. 10/2003.

44-13—ACA Ch. 3 No. 11/2003.

- 44-14—ACA Ch. 3 No. 12/2003.
- 44-16—ACA Ch. 3 No. 13/2003.
- 44-19—ACA Ch. 3 No. 14/2003.
- 44-28—ACA Ch. 3 No. 15/2003.
- 44-29—ACA Ch. 3 No. 16/2003.
- 48-1—ACA Ch. 3 No. 17/2003.
- 52-1—ACA Ch. 3 No. 18/2003 and ACA Ch. 3 No. 25/2003.

- Airports Act—Regulations—Statutory Rules 2003 No. 155.
- Australian Crime Commission Act—Regulations—Statutory Rules 2003 No. 164.
- Australian Prudential Regulation Authority Act—
  - Regulations—Statutory Rules 2003 No. 163.
  - Variation of instrument fixing charges to be paid to APRA, dated 14 July 2003.
- Australian Wine and Brandy Corporation Act—Regulations—Statutory Rules 2003 No. 191.
- Banking Act—
  - Determination of restricted expressions, dated 17 July 2003.
  - Regulations—Statutory Rules 2003 No. 185.
- Broadcasting Services Act—
  - Determination under clause 37FA of Schedule 4 to the *Broadcasting Services Act 1992* (No. 1) 2003.
  - Regulations—Statutory Rules 2003 No. 146.
- Charter of the United Nations Act—Regulations—Statutory Rules 2003 Nos 167 and 168.
- Civil Aviation Act—
  - Civil Aviation Regulations—
    - Exemptions Nos CASA EX10/2003 and CASA EX14/2003-CASA EX18/2003.
    - Instruments Nos CASA 267/03, CASA 290/03, CASA 298/03, CASA 299/03 and CASA 319/03.
    - Statutory Rules 2003 Nos 189 and 201.
  - Civil Aviation Safety Regulations—Airworthiness Directives—Part—
    - 105, dated 16, 17 [5], 18 [8], 20, 26 [11] and 27 [6] June 2003.
    - 106, dated 3, 26 [3] and 27 June 2003.
    - 107, dated 26 [3] and 27 June 2003.
- Class Rulings CR 2003/45-CR 2003/65.
- Commonwealth Electoral Act—Regulations—Statutory Rules 2003 No. 188.
- Corporations Act—Regulations—Statutory Rules 2003 Nos 194 and 202.
- Corporations (Fees) Act—Regulations—Statutory Rules 2003 No. 159.
- Corporations (Review Fees) Act—Regulations—Statutory Rules 2003 No. 160.
- Crimes Act—Regulations—Statutory Rules 2003 No. 165.
- Criminal Code Act—Regulations—Statutory Rules 2003 No. 184.
- Currency Act—Currency (Royal Australian Mint) Determination 2003 (No. 4).
- Customs Act—
  - CEO Instruments of Approval Nos 7-9 of 2003.
  - Regulations—Statutory Rules 2003 Nos 166, 178 and 186.

- Dairy Produce Act—Regulations—Statutory Rules 2003 No. 135.
- Defence Act—  
 Defence Determination 2002 (Employer Support Payments) Amendment Determination 2003 (No. 1).  
 Determination under section—  
 58B—Defence Determinations 2003/14-2003/22.  
 58H—Defence Force Remuneration Tribunal—Determinations Nos 11 and 12 of 2003.
- Defence Force (Home Loans Assistance) Act—  
 Declaration of Warlike Service (Operation Catalyst), dated 16 July 2003.  
 Declaration of Warlike Service (Operation Palate), dated 18 June 2003.
- Diplomatic Privileges and Immunities Act—Diplomatic Privileges and Immunities Regulations—Certificates under regulation 5A, dated 26 May 2003 [2]; and 26 June 2003 [2].
- Energy Grants (Credits) Scheme Act—Regulations—Statutory Rules 2003 No. 179.
- Environment Protection and Biodiversity Conservation Act—Instruments amending list of exempt native specimens under section 303DB, dated 7 [2] and 13 May 2003; and 7 and 21 July 2003.
- Excise Act—Regulations—Statutory Rules 2003 Nos 180 and 203.
- Export Market Development Grants Act—Determination 2/2003—Determination of the Initial Payment Ceiling Amount for grant year 2002-03.
- Family Law Act—Rules of Court—Statutory Rules 2003 Nos 172 and 183.
- Financial Management and Accountability Act—Regulations—Statutory Rules 2003 No. 148.
- Financial Sector (Collection of Data) Act—  
 Determination No. 4 of 2003—Determination of reporting standards SRS 100.1, SRS 110.0, SRS 110.1, SRS 110.2, SRS 120.0, SRS 200.0, SRS 210.0, SRS 210.1, SRS 210.2, SRS 220.0, SRS 230.0, SRS 240.0, SRS 250.0, SRS 260.0, SRS 300.0, SRS 310.0, SRS 310.1, SRS 310.2, SRS 320.0, SRS 330.0, SRS 340.0, SRS 350.0 and SRS 010.  
 Determination No. 6 of 2003—Determination of reporting standard CRS 400.0.  
 Revocation No. 1 and Determination No. 5 of 2003—  
 Revocation of reporting standards ARS 113.0, ARS 113.1, ARS 220.0, ARS 220.3, ARS 221.0, ARS 230.0, ARS 320.0, ARS 330.1 and ARS 331.0.  
 Determination of reporting standards ARS 113.0 (2003), ARS 113.1 (2003), ARS 220.0 (2003), ARS 220.3 (2003), ARS 221.0 (2003), ARS 222.0 (2003), ARS 230.0 (2003), ARS 320.0 (2003), ARS 320.9 (2003), ARS 330.1 (2003) and ARS 331.0 (2003).
- Fisheries Management Act and Fishing Levy Act—Regulations—Statutory Rules 2003 No. 134.
- Great Barrier Reef Marine Park Act—Regulations—Statutory Rules 2003 No. 200.
- Health Insurance Act—Health Insurance Determination HS/05/2003.
- Health Insurance Commission Act—Regulations—Statutory Rules 2003 No. 161.
- Income Tax Assessment Act 1936*—Regulations—Statutory Rules 2003 Nos 204 and 205.

- Industrial Chemicals (Notification and Assessment) Act—Regulations—Statutory Rules 2003 Nos 150 and 192.
- Lands Acquisition Act—Certificates under section 24, dated 7 July 2003 [2].
- Luxury Car Tax Determination LCTD 2003/1.
- Marine Navigation Levy Act—Regulations—Statutory Rules 2003 No. 156.
- Marriage Act—Regulations—Statutory Rules 2003 No. 198.
- Medical Indemnity (IBNR Indemnity) Contribution Act—Regulations—Statutory Rules 2003 No. 197.
- Medical Indemnity (Prudential Supervision and Product Standards) Act—  
Instrument Revoking Guidelines No. R1 of 2003.  
Guidelines under subsection 13(9)—  
Certification of Funding Plans by Auditors and Actuaries, dated 6 August 2003.  
Matters to be Included in a Funding Plan, dated 6 August 2003.  
Qualifications and Independence of Auditors and Actuaries, dated 6 August 2003.
- Migration Act—  
Direction under section 499—Direction No. 32.  
Statement for period 1 January to 30 June 2003 under section—  
48B [3].  
345 [9].  
351 [165].  
417 [117].  
Regulations—Statutory Rules 2003 No. 154.
- Military Superannuation and Benefits Act—Declaration—Statutory Rules 2003 No. 133.
- National Health Act—Regulations—Statutory Rules 2003 No. 193.
- Naval Defence Act—Regulations—Statutory Rules 2003 No. 199.
- Navigation Act—Regulations—Statutory Rules 2003 No. 157.
- Parliamentary Entitlements Act—Regulations—Statutory Rules 2003 No. 149.
- Primary Industries and Energy Research and Development Act—Regulations—Statutory Rules 2003 No. 144.
- Primary Industries (Customs) Charges Act—Regulations—Statutory Rules 2003 Nos 138 and 141.
- Primary Industries (Excise) Levies Act—Regulations—Statutory Rules 2003 Nos 136, 139, 142 and 145.
- Primary Industries Levies and Charges Collection Act—Regulations—Statutory Rules 2003 Nos 137, 140 and 143.
- Product Grants and Benefits Administration Act—Regulations—Statutory Rules 2003 No. 181.
- Product Ruling—  
Notice of Withdrawal—  
PR 2001/88 and PR 2001/142.  
PR 2002/8, PR 2002/64, PR 2002/69, PR 2002/71, PR 2002/89 and PR 2002/106.  
PR 2002/132 (Addendum).  
PR 2003/12 (Addendum) and PR 2003/46-PR 2003/51.

- Radiocommunications Act—Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2003 (No. 1).
- Retirement Savings Accounts Act—Regulations—Statutory Rules 2003 No. 195.
- Safety, Rehabilitation and Compensation Act—Notice under subsection 26(3)—Notice No. 4 of 2003.
- Seafarers Rehabilitation and Compensation Levy Collection Act—Regulations—Statutory Rules 2003 No. 147.
- Superannuation Act 1976*—
- Declaration—Statutory Rules 2003 No. 173.
  - Superannuation (CSS) (Eligible Employees — Exclusion) Declaration 2003.
  - Superannuation (CSS) (Eligible Employees — Inclusion) Declaration 2003.
- Superannuation Act 1990*—Eighteenth Amending Deed under section 5, dated 27 June 2003.
- Superannuation (Financial Assistance Funding) Levy Act and Financial Institutions Supervisory Levies Collection Act—Regulations—Statutory Rules 2003 No. 182.
- Superannuation Industry (Supervision) Act—Regulations—Statutory Rules 2003 Nos 170, 171 and 196.
- Superannuation (Productivity Benefit) Act—
- Declarations—Statutory Rules 2003 Nos 174-176.
  - Determination—Statutory Rules 2003 No. 177.
- Taxation Determinations TD 2003/18 and TD 2003/20.
- Taxation Ruling—
- Old Series—IT 2455 (Notice of Withdrawal).
  - TR 2000/18 (Addendum).
  - TR 2003/6, TR 2003/8 and TR 2003/9.
- Telecommunications Act—
- Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2003).
  - Telecommunications Numbering Plan Variation 2003 (No. 4).
- Telecommunications (Carrier Licence Charges) Act—
- Telecommunications (Annual Carrier Licence Charge) Determination 2003.
  - Telecommunications (Costs Attributable to Telecommunications Functions and Powers) Determination 2003.
  - Telecommunications (Recovery of ITU Budget Contribution) Determination 2003.
- Terrorism Insurance Act—Regulations—Statutory Rules 2003 No. 162.
- Textile, Clothing and Footwear Strategic Investment Program Act—Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2003 (No. 1).
- Therapeutic Goods Act—Regulations—Statutory Rules 2003 Nos 151 and 153.
- Therapeutic Goods (Charges) Act—Regulations—Statutory Rules 2003 No. 152.
- Trade Practices Act—Australian Competition and Consumer Commission (Accounting Separation—Telstra Corporation Limited) Direction (No. 1) 2003.
- Transport Safety Investigation Act—Regulations—Statutory Rules 2003 No. 158.



Veterans' Entitlements Act—Instrument under section—

90—Veterans' Entitlements Treatment (Centre for Military and Veterans' Health) Instrument 9/2003.

117—Veterans' Children Education Scheme (Update) Instrument No. 4/2003.

196B—Instruments Nos 25 to 30 of 2003.

#### 34 ADMINISTRATOR'S PROCLAMATIONS—COMMENCEMENT OF PROVISIONS OF ACTS

Proclamations by His Excellency the Administrator of the Commonwealth of Australia were tabled, notifying that he had proclaimed the following provisions of Acts to come into operation on the dates specified:

*Australian Prudential Regulation Authority Amendment Act 2003*—Schedules 1 to 3—1 July 2003 (*Gazette* No. S 230, 26 June 2003).

*Dairy Industry Service Reform Act 2003*—Schedule 1—1 July 2003 (*Gazette* No. S 228, 26 June 2003).

*Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Act 2003*—1 July 2003—

(a) paragraphs (1)(a) and (2)(a) of item 12 of Schedule 1;

(b) paragraphs (1)(a) and (2)(a) of item 13 of Schedule 2.

(*Gazette* No. S 231, 26 June 2003).

*Marriage Amendment Act 2002*—Schedule 1—1 September 2003 (*Gazette* No. GN 31, 6 August 2003).

*Transport Safety Investigation Act 2003*—Sections 3 to 71—1 July 2003 (*Gazette* No. S 229, 26 June 2003).

#### 35 INDEXED LISTS OF DEPARTMENTAL AND AGENCY FILES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended on 3 December 1998:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2003—Statements of compliance—

Commonwealth Ombudsman.

National Capital Authority.

#### 36 CIVIL AVIATION LEGISLATION AMENDMENT BILL 2003

**EXPORT CONTROL AMENDMENT BILL 2003**

**MIGRATION AMENDMENT (DURATION OF DETENTION) BILL 2003**

**AUSTRALIAN HUMAN RIGHTS COMMISSION LEGISLATION BILL 2003**

Messages from the House of Representatives were reported transmitting for the concurrence of the Senate the following bills:

Message no. 351, dated 26 June 2003—A Bill for an Act to amend the law relating to aviation, and for related purposes.

Message no. 352, dated 26 June 2003—A Bill for an Act to amend the *Export Control Act 1982*, and for related purposes.

Message no. 356, dated 26 June 2003—A Bill for an Act to amend the *Migration Act 1958*, and for related purposes.

Message no. 357, dated 27 June 2003 am—A Bill for an Act to rename, refocus and restructure the Human Rights and Equal Opportunity Commission and amend the law relating to human rights, and for related purposes.

The Special Minister of State (Senator Abetz) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

Senator Abetz moved—That these bills be now read a second time.

On the motion of Senator Mackay the debate was adjourned till the next day of sitting.

*Consideration of legislation:* Senator Abetz moved—That the bills be listed on the *Notice Paper* as separate orders of the day.

Question put and passed.

### 37 ADMINISTRATOR'S MESSAGES—ASSENT TO LAWS

Messages from His Excellency the Administrator of the Commonwealth of Australia were reported, informing the Senate that he had assented to the following laws:

24 June 2003—Message No. 16—

*Australian Prudential Regulation Authority Amendment Act 2003* (Act No. 42, 2003)

*Terrorism Insurance Act 2003* (Act No. 43, 2003)

*Criminal Code Amendment (Hizballah) Act 2003* (Act No. 44, 2003)

*Taxation Laws Amendment (Personal Income Tax Reduction) Act 2003* (Act No. 45, 2003).

26 June 2003—Message—

No. 17—

*Acts Interpretation Amendment (Court Procedures) Act 2003* (Act No. 46, 2003)

*Maritime Legislation Amendment (Prevention of Pollution from Ships) Act 2003* (Act No. 47, 2003)

*Intellectual Property Laws Amendment Act 2003* (Act No. 48, 2003)

*Murray-Darling Basin Amendment Act 2003* (Act No. 49, 2003).

No. 18—

*Health Care (Appropriation) Amendment Act 2003* (Act No. 50, 2003)

*Superannuation (Financial Assistance Funding) Levy Amendment Act 2003* (Act No. 51, 2003)

*Superannuation Industry (Supervision) Amendment Act 2003* (Act No. 52, 2003).

27 June 2003—Message No. 19—

*Energy Grants (Credits) Scheme Act 2003* (Act No. 53, 2003)

*Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003* (Act No. 54, 2003).

30 June 2003—Message—

No. 20—

*Appropriation Act (No. 1) 2003-2004* (Act No. 55, 2003)

*Appropriation Act (No. 2) 2003-2004* (Act No. 56, 2003)

*Appropriation (Parliamentary Departments) Act (No. 1) 2003-2004* (Act No. 57, 2003).

No. 21—

*Export Market Development Grants Amendment Act 2003* (Act No. 58, 2003)

*Australian Film Commission Amendment Act 2003* (Act No. 59, 2003)

*National Handgun Buyback Act 2003* (Act No. 60, 2003)

*HIH Royal Commission (Transfer of Records) Act 2003* (Act No. 61, 2003).

No. 22—

*Customs Amendment Act (No. 1) 2003* (Act No. 62, 2003)

*Customs Tariff Amendment Act (No. 1) 2003* (Act No. 63, 2003)

*Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act (No. 1) 2003* (Act No. 64, 2003).

No. 23—

*Taxation Laws Amendment Act (No. 2) 2003* (Act No. 65, 2003)

*Taxation Laws Amendment Act (No. 4) 2003* (Act No. 66, 2003)

*Taxation Laws Amendment Act (No. 6) 2003* (Act No. 67, 2003).

3 July 2003—Message No. 24—*Governor-General Amendment Act 2003* (Act No. 68, 2003).

15 July 2003—Message—

No. 25—

*National Health Amendment (Private Health Insurance Levies) Act 2003* (Act No. 69, 2003)

*Private Health Insurance (ACAC Review Levy) Act 2003* (Act No. 70, 2003)

*Private Health Insurance (Collapsed Organization Levy) Act 2003* (Act No. 71, 2003)

*Private Health Insurance (Council Administration Levy) Act 2003* (Act No. 72, 2003)

*Private Health Insurance (Reinsurance Trust Fund Levy) Act 2003* (Act No. 73, 2003).

No. 26—

*Industrial Chemicals (Notification and Assessment) Amendment Act 2003* (Act No. 74, 2003)

*Migration Legislation Amendment (Protected Information) Act 2003* (Act No. 75, 2003)

*Workplace Relations Amendment (Protection for Emergency Management Volunteers) Act 2003* (Act No. 76, 2003).

22 July 2003—Message No. 27—

*Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* (Act No. 77, 2003)

*Wheat Marketing Amendment Act 2003* (Act No. 78, 2003).

### 38 WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT)

#### **BILL 2002**

Order of the day read for the adjourned debate on the motion of the Minister for the Arts and Sport (Senator Kemp)—That this bill be now read a second time.

Debate resumed.

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At 7.30 pm—

On the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell) the debate was adjourned and the resumption of the debate was made an order of the day for a later hour.

**39 NOTICE OF MOTION WITHDRAWN**

Senator Brown, pursuant to notice of intention given earlier today (*see entry no. 10*), withdrew business of the Senate notice of motion no. 1 standing in his name for today for the disallowance of the Space Activities Amendment Regulations 2003 (No. 1), as contained in Statutory Rules 2003 No. 33 and made under the *Space Activities Act 1998*.

**40 WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002**

Order of the day read for the adjourned debate on the motion of the Minister for the Arts and Sport (Senator Kemp)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

The Senate resolved itself into committee for the consideration of the bill.

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*In the committee*

Bill taken as a whole by leave.

Senator Murray moved the following amendment:

Clause 2, page 1 (line 7) to page 3 (line 10), omit the clause, substitute:

**2 Commencement**

This Act commences the day after 11 August 2004, provided a simultaneous dissolution of the Senate and the House of Representatives in accordance with section 57 of the Constitution has not occurred before that date since this Act received the Royal Assent.

Debate ensued.

Question—That the amendment be agreed to—put and negatived.

Senator Murray moved the following amendments together by leave:

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

**1A At the end of section 14**

Add:

- (2) Subject to an agreement between the Commonwealth and the States, applications for a remedy for termination of employment received by the Australian Industrial Registrar must initially be considered for conciliation by a person who is both a member of the Commission and a member of the prescribed industrial authority of that State from which the application originated.

Schedule 1, page 4 (after line 30), after item 4, insert:

**4B Subsection 170CD(1)**

Insert:

*Commission* also includes a state industrial authority.

Debate ensued.

Question—That the amendments be agreed to—put and negatived.

Senator Murray moved the following amendment:

Schedule 1, page 4 (after line 21), after item 3, insert:

**3A After section 170CB**

Insert:

**170CBA Definition of employee**

- (1) For the purposes of this Division, a person (the worker) who contracts to supply his or her labour to another person is to be presumed to do so as an employee, unless it can be shown that the other person is a client or customer of a business genuinely carried on by the worker.
- (2) In determining whether a worker is genuinely carrying on a business, regard must be had to those of the following factors which are relevant in the circumstances of the case:
  - (a) the substance and practical reality of the relationship between the parties, and not merely the formally agreed terms; and
  - (b) the objects of this Division; and
  - (c) the extent of the control exercised over the worker by the other party; and
  - (d) the extent to which the worker is integrated into, or represented to the public as part of, the other party's business or organisation; and
  - (e) the degree to which the worker is or is not economically dependent on the other party; and
  - (f) whether the worker actually engages others to assist in providing the relevant labour; and
  - (g) whether the Australian Tax Office has previously made a personal services determination in relation to the worker pursuant to Subdivision 87-B of the *Income Tax Assessment Act 1997*, in connection with work of the kind performed for the other party; and
  - (h) whether the worker would be treated as an employee under the provisions of any State law governing unfair dismissal which, but for this Act, would otherwise apply to the worker.
- (3) A contract is not to be regarded as one other than for the supply of labour merely because:
  - (a) the contract permits the work in question to be delegated or subcontracted to others; or
  - (b) the contract is also for the supply of the use of an asset or for the production of goods for sale.
- (4) An employment agency which contracts to supply the labour of a person (the worker) to another party (the client) is to be deemed to be that person's employer, except where this results in a direct contract between the worker and the client in relation to that labour.

- (5) Where:
- (a) an arrangement is made to supply the labour of a person (the worker) to another party (the ultimate employer) through a contract or chain of contracts involving another entity (the intermediary); and
  - (b) it cannot be shown that the intermediary is genuinely carrying on a business in relation to that labour that is independent of the ultimate employer, on the basis of the factors set out in subsection (2);
- the worker is to be deemed to be the employee of the ultimate employer.
- (6) For the purposes of this section, **employment agency** means an entity whose business involves or includes the supply of workers to other unrelated businesses or organisations, whether through a contract or a chain of contracts.

#### **170CBB Declaratory orders by Full Bench**

- (1) The Full Bench may, on application by an organisation, a peak body or the Minister, make an order declaring:
  - (a) a class of persons who perform work in an industry under a contract for services to be employees; and
  - (b) a person to be an employer of the employees.
- (2) The Full Bench may make an order only if it considers that the class of persons would be more appropriately regarded as employees.
- (3) In considering whether to make an order, the Full Bench may consider:
  - (a) the relative bargaining power of the class of persons; or
  - (b) the economic dependency of the class of persons on the contract; or
  - (c) the particular circumstances and needs of low paid employees; or
  - (d) whether the contract is designed to, or does, avoid the provisions of an industrial instrument; or
  - (e) whether the contract is designed to, or does, exclude the operation of the minimum wage; or
  - (f) the particular circumstances and needs of employees, including women, persons from a non-English speaking background, young workers and outworkers; or
  - (g) the consequences of not making an order for the class of persons; or
  - (h) the requirements listed in section 170CBA.
- (4) This section applies to constitutional corporations.
- (5) In this section:
 

**contract** includes:

  - (a) an arrangement or understanding; and
  - (b) a collateral contract relating to a contract.

**constitutional corporation** means a trading, foreign or financial corporation within the meaning of paragraph 51(xx) of the Constitution.

**industrial instrument** includes an award or agreement under this Act or a State Act.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 7

Senators—

Bartlett	Cherry (Teller)	Murray	Stott Despoja
Brown	Greig	Nettle	

NOES, 37

Senators—

Barnett	Eggleston	Kirk	Ray
Bishop	Evans	Knowles	Stephens
Brandis	Ferguson	Ludwig	Tchen
Buckland (Teller)	Forshaw	Lundy	Tierney
Campbell, Ian	Harradine	Marshall	Troeth
Colbeck	Hogg	Mason	Webber
Collins	Humphries	McLucas	Wong
Cook	Hutchins	Moore	
Crossin	Johnston	Murphy	
Denman	Kemp	Payne	

Question negatived.

Senator Murray moved the following amendment:

Schedule 1, page 4 (after line 30), after item 4, insert:

**4A At the end of paragraph 170CC(1)(c)**

Add “except employees who:

- (i) are engaged by a particular employer on a regular basis for a sequence of periods of employment during a period of at least 6 months; and
- (ii) would, but for the dismissal, have had a reasonable expectation of continuing employment with the employer;

Debate ensued.

Question—That the amendment be agreed to—put and negatived.

Question—That the bill be agreed to—divided in respect of Schedule 2, items 1 to 3 and 5 to 13 and Schedule 3, items 2 and 4 to 7.

Schedule 2, items 1 to 3 and 5 to 13 and Schedule 3, items 2 and 4 to 7 debated and agreed to.

Senator Murray moved the following amendments together by leave:

Schedule 2, item 4, page 13 (line 1), omit “**small businesses**”, substitute “**frivolous or vexatious claims**”.

Schedule 2, item 4, page 13 (lines 7 and 8), omit paragraph 170CEC(1)(b).

Schedule 2, item 4, page 13 (lines 32 to 35), omit “In deciding whether to hold a hearing, the Commission must take into account the cost that would be caused to the employer’s business by requiring the employer to attend the hearing.”.

Schedule 2, item 4, page 14 (line 7), at the end of paragraph 170CEC(5)(a), add “or may invite the employee, in the time specified in the notice, to be heard before the Registrar or Commissioner without the need for the employer to be present, so long

as the employer has the right to provide any further information that is relevant to whether this section requires the order to be made”.

Schedule 2, item 4, page 14 (after line 9), at the end of section 170CEC, add:

Note: An employer shall not be required to attend before the Commission merely because an election is made by an employee under this section.

Schedule 2, page 14 (after line 30), after item 5, insert:

**5A After subsection 170CG(3)**

Insert:

- (3A) If the Commission is satisfied that the matters listed in paragraphs (3)(da) and (db) impacted on the procedures followed by the employer in effecting the termination then the termination is not harsh, unjust or unreasonable on the ground of mere procedural defect, if the termination was otherwise fair in substance.

Schedule 2, item 15, page 16 (line 3), omit “(about dismissal of applications relating to small businesses)”.

Schedule 2, item 16, page 16 (lines 7 and 8), omit “(about dismissal of applications relating to small businesses)”.

Schedule 3, page 19 (after line 5), after item 8, insert:

**8A At the end of section 170CG**

Add:

- (5) In determining whether circumstances are exceptional in accordance with subsection (4), the Commission must have regard to whether procedures followed by the employer were in accordance with an industrial agreement or any selection criteria agreed to with the employees and approved by the Commission prior to the terminations occurring.

Debate ensued.

Question—That the amendments be agreed to—put and negatived.

Bill agreed to.

Bill to be reported without amendment.

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The Acting Deputy President (Senator Brandis) resumed the chair and the Temporary Chair of Committees reported accordingly.

On the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell) the report from the committee was adopted.

Senator Ian Campbell moved—That this bill be now read a third time.

Question put.



The Senate divided—

AYES, 29

Senators—

Abetz	Ellison	Lightfoot	Tchen
Barnett	Ferguson	Macdonald, Ian	Tierney
Boswell	Ferris (Teller)	Macdonald, Sandy	Troeth
Brandis	Heffernan	Mason	Vanstone
Calvert	Humphries	McGauran	Watson
Campbell, Ian	Johnston	Payne	
Colbeck	Kemp	Santoro	
Eggleston	Knowles	Scullion	

NOES, 34

Senators—

Bartlett	Denman	Ludwig	O'Brien
Bishop	Evans	Lundy	Ray
Bolkus	Forshaw	Mackay	Sherry
Brown	Greig	Marshall	Stephens
Buckland	Harradine	McLucas	Stott Despoja
Cherry	Hogg	Moore	Webber
Collins	Hutchins	Murphy	Wong
Cook	Kirk	Murray	
Crossin (Teller)	Lees	Nettle	

Question negatived.

41 **WORKPLACE RELATIONS AMENDMENT (TRANSMISSION OF BUSINESS) BILL 2002**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Transport and Regional Services (Senator Boswell)—That this bill be now read a second time.

Debate resumed.

*At 9.50 pm:* Debate was interrupted.

42 **ADJOURNMENT**

The Acting Deputy President (Senator Bolkus) proposed the question—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 10.14 pm till Tuesday, 12 August 2003 at 12.30 pm.

43 **ATTENDANCE**

Present, all senators except Senator Ridgeway.

**HARRY EVANS**  
Clerk of the Senate