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1 MEETING OF SENATE

The Senate met at 9 am. The Deputy President (Senator Hogg) took the chair and read prayers.

2 NOTICE

Senator Nettle: To move on the next day of sitting—That the Senate calls on the Government to bring Mr David Hicks home from Guantanamo Bay. (*general business notice of motion no. 660*)

3 COPYRIGHT AMENDMENT BILL 2006

Order of the day read for the further consideration of the bill in committee of the whole.

In the committee

Consideration resumed of the bill, as amended.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of the Minister for Justice and Customs (Senator Ellison) the report from the committee was adopted and the bill read a third time.

**4 INDEPENDENT CONTRACTORS BILL 2006
WORKPLACE RELATIONS LEGISLATION AMENDMENT (INDEPENDENT
CONTRACTORS) BILL 2006**

Order of the day read for the consideration of the bills in committee of the whole.

In the committee

INDEPENDENT CONTRACTORS BILL 2006—

Bill taken as a whole by leave.

Explanatory memorandum: The Minister for Fisheries, Forestry and Conservation (Senator Abetz) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

On the motion of Senator Abetz the following amendments, taken together by leave, were debated and agreed to:

Clause 7, page 6 (line 30) to page 7 (line 3), omit paragraph (1)(c), substitute:

- (c) without limiting paragraphs (a) and (b)—expressly provide for a court, commission or tribunal to do any of the following in relation to a services contract on an unfairness ground:
 - (i) make an order or determination (however described) setting aside, or declaring to be void or otherwise unenforceable, all or part of the contract;
 - (ii) make an order or determination (however described) amending or varying all or part of the contract.

Clause 7, page 7 (line 21), at the end of subparagraph (2)(b)(ii), add “or”.

Clause 7, page 7 (lines 22 and 23), omit subparagraph (2)(b)(iii).

Clause 8, page 8 (line 32), omit “rights”, substitute “protection”.

Clause 12, page 10 (after line 28), at the end of the clause, add:

- (3) In reviewing a services contract, the Court must only have regard to:
 - (a) the terms of the contract when it was made; and
 - (b) to the extent that this Part allows the Court to consider other matters—other matters as existing at the time when the contract was made.
- (4) For the purposes of this Part, *services contract* includes a contract to vary a services contract.

Note: The effect of subsection (4) is that a contract to vary a services contract can be reviewed under this Part, as the contract to vary will itself be a services contract.

Clause 14, page 11 (lines 23 to 26), omit the definition of *other review proceedings*, substitute:

other review proceedings means proceedings in relation to a services contract:

- (a) under a provision of a law of a State or Territory that makes provision as mentioned in paragraph 7(1)(c) and is not affected by the exclusion provisions; or
- (b) under a provision of a law of the Commonwealth, or of a State or Territory, that is specified in regulations made for the purposes of this paragraph.

Clause 15, page 12 (lines 11 to 16), omit subclause (2).

Clause 15, page 12 (lines 26 and 27), omit subclause (5).

On the motion of Senator Abetz the following amendment was debated and agreed to:

Clause 7, page 7 (lines 10 to 14), omit paragraph (2)(a), substitute:

- (a) a law of a State or Territory, to the extent that the law deals with matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers), other than matters mentioned in paragraph (1)(c); or

Question—That the bill, as amended, be agreed to—divided in respect of Part 4.

Question—That Part 4 stand as printed—put and negatived.

Senator Murray moved the following amendments together by leave:

Clause 3, page 3 (lines 1 and 2), omit paragraph (2)(a), substitute:

- (a) the definition of employee in the *Workplace Relations Act 1996*;
- and

Clause 5, page 4 (line 8), at the end of subclause (1), add:

- ; but (d) is not a contract for the supply of labour as an employee within the meaning of subsections 5(1A) to (1F) of the *Workplace Relations Act 1996*.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Clause 7, page 7 (lines 15 to 26), omit paragraphs (2)(b) and (c), substitute:

- (b) a law of a state or Territory, to the extent that the law:
 - (i) applies to a services contract that relates to the performance of road transport work by the independent contractor, other than a services contract to which an independent contractor that is a body corporate is a party, unless the road transport work to which the contract relates is wholly or mainly performed by a director of the body corporate or a member of the family of a director of the body corporate; and
 - (ii) makes provision in relation to such a contract, including but not limited to provision about any one or more of the matters specified in paragraphs (1)(a), (b) and (c); or
- (c) without limiting paragraph (b), any of the following laws:
 - (i) Chapter 6 of the *Industrial Relations Act 1996* of New South Wales (and any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of Chapter 6);
 - (ii) the *Owner Drivers and Forestry Contractors Act 2005* of Victoria;
 - (iii) any instrument made under a provision of a law referred to in subparagraph (i) or (ii); or
- (d) a law of a State or Territory that is specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified.

Clause 10, page 9 (lines 29 to 33), omit subclause (2), substitute:

- (2) To avoid doubt, subsection (1) has effect even if a law specified in regulations made under that subsection deals with matters that, because of subsection 8(2), are not workplace relations matters.

Clause 10, page 9 (after line 33), at the end of the clause, add:

- (3) Subsection (1) does not have effect in relation to a law referred to in paragraph 7(2)(a), (b) or (c).

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 28

Senators—

Allison	Forshaw	McEwen	Polley
Bishop	Hogg	McLucas	Ray
Brown, Bob	Hurley	Milne	Siewert
Brown, Carol	Hutchins	Moore	Stephens
Carr	Kirk (Teller)	Murray	Sterle
Crossin	Ludwig	Nettle	Webber
Evans	Marshall	O'Brien	Wortley

NOES, 33

Senators—

Abetz	Ferguson	Kemp	Payne
Adams	Ferris	Lightfoot	Ronaldson
Barnett	Fielding	Macdonald, Ian	Scullion
Bernardi	Fierravanti-Wells	Macdonald, Sandy	Troeth
Brandis	Fifield	McGauran	Trood
Campbell, Ian	Heffernan	Minchin	Watson
Colbeck	Humphries	Nash	
Eggleston	Johnston	Parry (Teller)	
Ellison	Joyce	Patterson	

Question negatived.

Senator Murray moved the following amendments together by leave:

Clause 12, page 10 (lines 20 to 23), omit subclause (1), substitute:

- (1) An application may be made to the Court to review a services contract on any of the following grounds:
 - (a) the contract is unfair, or became unfair because of any conduct of the parties or for any other reasons;
 - (b) the contract is harsh, or became harsh because of any conduct of the parties or for any other reasons.

Clause 12, page 10 (after line 28), at the end of the clause, add:

- (3) An application under subsection (1) may be made even though the services contract has terminated.

Clause 16, page 13 (after line 2), after subclause (1), insert:

- (1A) If an order under subsection (1) is made by the Court, the Court may also make an order in relation to the payment of money in connection with the services contract as the Court considers just in the circumstances of the case.

Clause 17, page 13 (line 25), at the end of subclause (1), add “or unreasonably failed to agree to a settlement of the claim”.

Debate ensued.

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

Bill, as amended, agreed to.

WORKPLACE RELATIONS LEGISLATION AMENDMENT (INDEPENDENT CONTRACTORS) BILL 2006—

Bill taken as a whole by leave.

Explanatory memorandum: Senator Abetz tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

On the motion of Senator Abetz the following amendments, taken together by leave, were debated and agreed to:

Clause 2, page 2 (at the end of the table), add:

4. Schedules 3, 4, The day after this Act receives the Royal
5 and 6 Assent.

Schedule 1, item 1, page 3 (lines 24 to 31), omit subsection 900(2) (not including the note), substitute:

- (2) A person does not contravene subsection (1) if the person proves that, at the time the person made the representation concerned, the person did not know that, and was not reckless as to whether, the contract was a contract of employment rather than a contract for services.

Schedule 1, item 1, page 4 (lines 20 to 28), omit subsection 901(2) (not including the note), substitute:

- (2) A person does not contravene subsection (1) if the person proves that, at the time the person made the representation concerned, the person did not know that, and was not reckless as to whether, if the contract were entered into, the contract would be a contract of employment rather than a contract for services.

Schedule 1, item 1, page 5 (lines 16 to 19), omit subsection 902(3), substitute:

- (3) In proceedings alleging a contravention of subsection (1) it is presumed, other than in relation to the granting of an interim injunction, that the employer's sole or dominant purpose was the purpose referred to in paragraph (1)(b), unless the employer proves otherwise.

Note: Subsection 904(2A) permits the Court to grant an injunction for a breach of this section, and section 838 deals with interim injunctions.

Schedule 1, item 1, page 6 (after line 8), after subsection 904(2), insert:

- (2A) If a person has contravened subsection 902(1), the Court may, on application by an eligible person, grant an injunction and make any other orders that the Court considers necessary to stop the contravention or remedy its effects.
- (2B) Other orders the Court may make under subsection (2A) include (but are not limited to):
- (a) if the contravention was constituted by dismissing an employee—an order to reinstate the person dismissed to the position that the person occupied immediately before the dismissal or to a position no less favourable than that position; and

(b) in any case—to pay to the person dismissed, or threatened with dismissal, compensation for loss suffered as a result of the dismissal or threatened dismissal.

(2C) The Court may make orders under subsection (2A) in addition to, or instead of, imposing a pecuniary penalty.

On the motion of Senator Abetz the following amendments, taken together by leave, were debated and agreed to:

Schedule 2, page 10 (after line 6), after item 6, insert:

6A Subsection 75(2)

Repeal the subsection.

Schedule 2, page 10 (after line 11), at the end of the Schedule, add:

Part 3—Consequential amendments relating to building contractors

Building and Construction Industry Improvement Act 2005

8 Subsection 4(1) (paragraph (a) of the definition of *designated building law*)

After “this Act”, insert “, the *Independent Contractors Act 2006*”.

9 Subparagraph 10(a)(i)

After “this Act”, insert “, the *Independent Contractors Act 2006*”.

10 Subparagraph 10(b)(i)

After “this Act,”, insert “the *Independent Contractors Act 2006*,”.

11 Paragraph 10(d)

After “this Act”, insert “, the *Independent Contractors Act 2006*”.

12 Paragraph 10(e)

After “this Act” (wherever occurring), insert “, the *Independent Contractors Act 2006*”.

13 Paragraph 10(f)

After “this Act,”, insert “the *Independent Contractors Act 2006*,”.

14 Paragraph 67(c)

Before “Workplace”, insert “*Independent Contractors Act 2006* or the”.

15 Paragraph 71(1)(b)

Before “Workplace”, insert “*Independent Contractors Act 2006* or the”.

16 Subsection 73(3)

Omit “subsection 84(5)”, substitute “subsection 167(7)”.

Note: This item updates a cross-reference.

17 After section 73

Insert:

73A ABC Commissioner or ABC Inspector may institute proceedings under the *Independent Contractors Act 2006*

- (1) If a provision of the *Independent Contractors Act 2006*, or of an instrument under that Act, authorises a workplace inspector (within the meaning of that Act) to make an application to, or otherwise institute proceedings in, a court, the provision is also taken to authorise the ABC Commissioner or an ABC Inspector to make such an application, or institute such proceedings, in any case where the application or proceedings relate to a matter that involves:
 - (a) a building industry participant; or
 - (b) building work.
- (2) If the ABC Commissioner or an ABC Inspector makes such an application, or institutes such proceedings, the *Independent Contractors Act 2006* and any such instrument have effect, in relation to the application or proceedings, as if the ABC Commissioner or the ABC Inspector were a workplace inspector (within the meaning of that Act).
- (3) Directions under subsection 167(7) of the Workplace Relations Act do not apply to the ABC Commissioner or an ABC Inspector in relation to such an application or such proceedings.

18 Paragraph 77(1)(b)

Before “Workplace”, insert “*Independent Contractors Act 2006* or the”.

19 Subparagraph 78(2)(d)(i)

After “this Act”, insert “, the *Independent Contractors Act 2006*”.

Senator Abetz moved the following amendments together by leave:

Page 10 (after line 11), at the end of the bill, add:

**Schedule 3—Amendments relating to protecting
redundancy entitlements**

Workplace Relations Act 1996

1 At the end of subsection 347(7)

Add:

Note: However, a redundancy provision that was included in a workplace agreement that has ceased operating might be preserved for a period of up to 12 months (see section 399A).

2 Paragraph 393(4)(b)

After “by the agreement”, insert “, or is a bargaining agent doing so at the request of the employer bound by the agreement”.

3 At the end of subsection 393(5)

Add:

; and (e) if the person giving the notice is the employer bound by the agreement, or is a bargaining agent doing so at the request of the employer bound by the agreement—state whether the parties to the workplace agreement will, under section 399A, continue to be bound by one or more redundancy provisions included in the workplace agreement; and

- (f) if the parties to the workplace agreement will continue to be so bound—include an annexed copy of the provision or the provisions.

4 Paragraph 394(5)(a)

After “lodges”, insert “, or a bargaining agent lodges at the request of the employer,”.

5 Paragraph 394(5)(c)

Repeal the paragraph, substitute:

- (c) a copy of the undertakings was not annexed to the declaration.

6 At the end of subsection 395(1)

Add:

- ; and (c) if the employer in relation to the agreement, or a bargaining agent at the request of the employer in relation to the agreement, lodges the declaration to terminate the agreement under section 393—the declaration states whether the parties to the agreement will, under section 399A, continue to be bound by one or more redundancy provisions included in the agreement.

7 Subsection 395(2)

Repeal the subsection, substitute:

- (2) If the employer in relation to the agreement, or a bargaining agent at the request of the employer in relation to the agreement, lodges the declaration to terminate the agreement under section 393, undertakings are lodged in relation to the termination if a copy of the undertakings is annexed to the declaration.

8 After subsection 396(1)

Insert:

- (1A) If the employer in relation to a workplace agreement, or a bargaining agent at the request of the employer in relation to a workplace agreement, lodged a declaration under subsection 395(1) to terminate the agreement under section 393, the receipt must state whether:
 - (a) the declaration so lodged states that the parties to the workplace agreement will continue to be bound by one or more redundancy provisions included in the workplace agreement that was terminated; and
 - (b) a copy of the provision or provisions was annexed to the declaration.

9 At the end of Division 9 of Part 8

Add:

399A Preservation of redundancy provisions in certain circumstances

- (1) This section applies if a workplace agreement is terminated unilaterally, in accordance with section 393, by the employer in relation to the agreement or by a bargaining agent at the request of the employer in relation to the agreement.

- (2) Any party who was bound by the workplace agreement immediately before it ceased operating continues to be bound, immediately after that time, by any redundancy provision that was included in the workplace agreement as if the workplace agreement had continued operating.
- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subsection (2) as if the provision was a workplace agreement in operation.
- (3) A party continues to be bound by a redundancy provision referred to in subsection (2), in relation to an employee who is bound by the redundancy provision, until the earliest of the following:
 - (a) the end of the period of 12 months from the time that the workplace agreement ceased operating;
 - (b) the time when the employee ceases to be employed by the employer;
 - (c) the time when another workplace agreement comes into operation in relation to the employee and the employer.
- (4) In this section:

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

10 After Division 6 of Part 11

Insert:

Division 6A—Transmission of preserved redundancy provisions from workplace agreements

598A Transmission of preserved redundancy provisions from workplace agreements

- (1) If:
 - (a) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) an employee;
 were bound, under section 399A or because of a previous application of this section, by a redundancy provision that was previously included in a workplace agreement that was terminated; and
 - (b) the employee is a transferring employee;
 the new employer is bound by the redundancy provision in relation to the transferring employee by force of this section.

Note: The new employer must notify the transferring employee and lodge a copy of the notice with the Employment Advocate (see sections 603A and 603B).

- (2) Subject to subsection (3), the redundancy provision prevails over any other redundancy provision included in any other instrument that would otherwise have effect, to the extent of any inconsistency.

Period for which new employer remains bound

- (3) The new employer remains bound by the redundancy provision in relation to the transferring employee, by force of this section, until the earliest of the following:
- (a) the end of the period of 12 months from the time that the workplace agreement referred to in paragraph (1)(a) ceased operating;
 - (b) the time when the transferring employee ceases to be employed by the new employer;
 - (c) the time when another workplace agreement comes into operation in relation to the new employer and the transferring employee.

Old employer's rights and obligations that arose before time of transmission not affected

- (4) This section does not affect the rights and obligations of the old employer that arose before the time of transmission.

Definitions

- (5) In this section:

instrument means any of the following:

- (a) a workplace agreement;
- (b) a pre-reform certified agreement (within the meaning of Schedule 7);
- (c) a preserved State agreement;
- (d) a notional agreement preserving State awards;
- (e) an award.

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

11 After section 603

Insert:

603A Informing transferring employees about transmission of preserved redundancy provisions

- (1) This section applies if an employer is bound, by force of section 598A, by one or more redundancy provisions (within the meaning of that section) in relation to a transferring employee.
- (2) Within 28 days after the transferring employee starts being employed by the employer, the employer must take reasonable steps to give the transferring employee a written notice that complies with subsection (3).

Note: This is a civil remedy provision, see section 605.

- (3) The notice must:
 - (a) identify the redundancy provision or redundancy provisions; and
 - (b) state that the employer is bound by the provision or provisions; and
 - (c) specify the date that is 12 months after the time that the workplace agreement that included the provision or provisions ceased operating; and
 - (d) state that the employer will remain bound by the provision or provisions until that date, or an earlier date in accordance with subsection 598A(3).
- (4) Subsection (2) does not apply if a workplace agreement comes into operation in relation to the employer and the transferring employee within 14 days of the time of transmission.

603B Lodging copy of notice about preserved redundancy provisions with Employment Advocate

- (1) If an employer gives a notice under section 603A to a transferring employee, the employer must lodge a copy of the notice with the Employment Advocate within the period specified in subsection (2). The copy must be lodged in accordance with subsection (3).

Note 1: This is a civil remedy provision, see section 605.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (2) The notice must be lodged within 14 days after the day specified in paragraph (a) or (b):
 - (a) if the employer gives a notice to an employee in respect of a redundancy provision that was included in an AWA—the day on which that notice is given; or
 - (b) if the employer gives one or more notices to one or more employees in respect of a redundancy provision that was included in a collective agreement—the earliest day on which a notice was given.

Lodgment with Employment Advocate

- (3) A notice is lodged with the Employment Advocate in accordance with this subsection only if it is actually received by the Employment Advocate.

Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

12 Subsection 604(1)

After “603”, insert “or 603B”.

13 Subsection 604(2)

After “603”, insert “or 603B (as the case requires)”.

14 Subsection 604(3)

After “603”, insert “or 603B”.

15 At the end of subsection 605(1)

Add:

- ; (d) subsection 603A(2);
- (e) subsection 603B(1).

16 Subsection 605(5)

After “an instrument”, insert “, or in relation to a preserved redundancy provision that was previously included in an instrument,”.

17 Subsection 605(5) (table item 2)

After “bound by the agreement”, insert “or the redundancy provision”.

17A Section 717 (note 1 to the definition of *applicable provision*)

Before “This”, insert “Preserved redundancy provisions are treated as if they were workplace agreements (see for example section 399A).”.

18 At the end of subclause 3(4) of Schedule 7

Add:

Note: However, a redundancy provision that was included in a pre-reform certified agreement that has ceased operating might be preserved for a period of up to 12 months (see clause 6A).

19 After clause 6 of Schedule 7

Insert:

6A Preservation of redundancy provisions in certain circumstances

- (1) This clause applies if a pre-reform certified agreement is terminated, on application by the employer in relation to the agreement, by the Commission in accordance with subsection 170MH(3) of the pre-reform Act.

Note: Subsection 170MH(3) of the pre-reform Act continues to apply because of paragraph 2(1)(k) of this Schedule.

- (2) Any party who was bound by the pre-reform certified agreement immediately before it ceased operating continues to be bound, immediately after that time, by any redundancy provision that was included in the pre-reform certified agreement as if the pre-reform certified agreement had continued operating.
- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subclause (2) as if the provision was a pre-reform certified agreement in operation.
- (3) Subject to subclause (4), a redundancy provision referred to in subclause (2) prevails over any other redundancy provision included in any other instrument that would otherwise have effect.

- (4) A party continues to be bound by a redundancy provision referred to in subclause (2), in relation to an employee who is bound by the redundancy provision, until the earliest of the following:
- (a) the end of the period of 12 months from the time that the pre-reform certified agreement ceased operating;
 - (b) the time when the employee ceases to be employed by the employer;
 - (c) the time when a workplace agreement comes into operation in relation to the employee and the employer.

- (5) In this clause:

instrument means either of the following:

- (a) a preserved State agreement;
- (b) a notional agreement preserving State awards;
- (c) an award;
- (d) a transitional award (within the meaning of Schedule 6).

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

6B Notification of preservation of redundancy provisions

- (1) This clause applies if the parties to a pre-reform certified agreement will, under clause 6A, continue to be bound by one or more redundancy provisions included in the agreement.
- (2) The Commission must issue a copy of the order terminating the agreement to:
 - (a) the employer who will be bound by the redundancy provision or the redundancy provisions; and
 - (b) any organisation of employees that will be bound by the redundancy provision or the redundancy provisions.
- (3) The order must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the parties to the agreement will be bound by the provision or provisions; and
 - (c) specify the date that is 12 months after the time that the order terminating the agreement takes effect; and
 - (d) state that the parties will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 6A(4).

6C Employer must notify employees of preserved redundancy provisions

- (1) An employer that has, under clause 6B, received a copy of an order terminating a pre-reform certified agreement must take reasonable steps to ensure that all employees who are bound by the agreement immediately before the agreement ceases operating are, within 21 days of the employer receiving a copy of the order, given a copy of the order.
- (2) Subclause (1) is a *civil remedy provision* for the purpose of this clause.
Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
- (3) The Court may order a person who has contravened the civil remedy provision to pay a pecuniary penalty.
Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
- (4) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.
- (5) An application for an order under subclause (3) in relation to a pre-reform certified agreement may be made by the following persons:
 - (a) an employee who is bound by the agreement immediately before the agreement ceases operating;
 - (b) an organisation of employees that is bound by the agreement immediately before the agreement ceases operating;
 - (c) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of an employee referred to in paragraph (a) and has been requested by the employee to apply for the order on the employee's behalf;
 - (d) a workplace inspector.

20 At the end of subclause 18(3) of Schedule 7

Add:

Note: However, a redundancy provision that was included in a pre-reform AWA that has ceased operating might be preserved for a period of up to 12 months (see clause 20A).

21 After clause 20 of Schedule 7

Insert:

20A Preservation of redundancy provisions in certain circumstances

- (1) This clause applies if a pre-reform AWA is terminated, on application by the employer in relation to the AWA, by the Commission in accordance with subsection 170VM(3) of the pre-reform Act.
Note: Subsection 170VM(3) of the pre-reform Act continues to apply because of paragraph 17(1)(c) of this Schedule.
- (2) The employer and the employee in relation to the pre-reform AWA continue to be bound, immediately after the pre-reform AWA ceases operating, by any redundancy provision that was included in the pre-reform AWA as if the pre-reform AWA had continued operating.

- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subclause (2) as if the provision was a pre-reform AWA in operation.
- (3) Subject to subclause (4), a redundancy provision referred to in subclause (2) prevails over any other redundancy provision included in any other instrument that would otherwise have effect.
- (4) The employer continues to be bound by a redundancy provision referred to in subclause (2), in relation to the employee, until the earliest of the following:
- (a) the end of the period of 12 months from the time that the pre-reform AWA ceases operating;
 - (b) the time when the employee ceases to be employed by the employer;
 - (c) the time when a workplace agreement comes into operation in relation to the employee and the employer.
- (5) In this clause:
- instrument*** means any of the following:
- (a) a collective agreement;
 - (b) a pre-reform certified agreement;
 - (c) a notional agreement preserving State awards;
 - (d) an award.
- redundancy provision*** means any of the following kinds of provisions:
- (a) a provision relating to redundancy pay in relation to a termination of employment;
 - (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
 - (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;
- where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

20B Notification of preservation of redundancy provisions

- (1) This clause applies if the employer and the employee in relation to a pre-reform AWA will, under clause 20A, continue to be bound by one or more redundancy provisions included in the pre-reform AWA.
- (2) The determination issued by the Commission under subsection 170VM(4) of the pre-reform Act must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the employer and the employee in relation to the pre-reform AWA will be bound by the provision or provisions; and
 - (c) specify the date that is 12 months after the time that the determination terminating the pre-reform AWA takes effect; and
 - (d) state that the employer and the employee will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 20A(4).

22 After clause 21 of Schedule 8

Insert:

21A Preservation of redundancy provisions in preserved collective State agreements in certain circumstances

- (1) This clause applies if a preserved collective State agreement is terminated, on application by the employer in relation to the agreement, by the Commission in accordance with subsection 170MH(3) of the pre-reform Act.

Note: Subsection 170MH(3) of the pre-reform Act applies because of subclause 21(2) of this Schedule and paragraph 2(1)(k) of Schedule 7.

- (2) Any party who was bound by the preserved collective State agreement immediately before it ceased operating continues to be bound, immediately after that time, by any redundancy provision that was included in the agreement as if the agreement had continued operating.
- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subclause (2) as if the provision was a preserved collective State agreement in operation.
- (3) Subject to subclause (4), a redundancy provision referred to in subclause (2) prevails over any other redundancy provision included in any other instrument that would otherwise have effect.
- (4) A party continues to be bound by a redundancy provision referred to in subclause (2), in relation to an employee who is bound by the redundancy provision, until the earliest of the following:
- (a) the end of the period of 12 months from the time that the preserved collective State agreement ceased operating;
 - (b) the time when the employee ceases to be employed by the employer;
 - (c) the time when a workplace agreement comes into operation in relation to the employee and the employer.
- (5) In this clause:

instrument means any of the following:

- (a) a pre-reform certified agreement (within the meaning of Schedule 7);
- (b) a notional agreement preserving State awards;
- (c) an award.

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

21B Notification of preservation of redundancy provisions in preserved collective State agreements

- (1) This clause applies if the parties to a preserved collective State agreement will, under clause 21A, continue to be bound by one or more redundancy provisions included in the agreement.
- (2) The Commission must issue a copy of the order terminating the agreement to:
 - (a) the employer who will be bound by the redundancy provision or the redundancy provisions; and
 - (b) any organisation that will be bound by the redundancy provision or the redundancy provisions.
- (3) The order must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the parties to the agreement will be bound by the provision or provisions; and
 - (c) specify the date that is 12 months after the time that the order terminating the agreement takes effect; and
 - (d) state that the parties will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 21A(4).

21C Employer must notify employees of preserved redundancy provisions in preserved collective State agreements

- (1) An employer that has, under clause 21B, received a copy of an order terminating a preserved collective State agreement must take reasonable steps to ensure that all employees who are bound by the agreement immediately before the agreement ceases operating are, within 21 days of the employer receiving a copy of the order, given a copy of the order.
- (2) Subclause (1) is a *civil remedy provision* for the purpose of this clause.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
- (3) The Court may order a person who has contravened the civil remedy provision to pay a pecuniary penalty.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
- (4) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.
- (5) An application for an order under subclause (3) in relation to a preserved collective State agreement may be made by the following persons:
 - (a) an employee who is bound by the agreement immediately before the agreement ceases operating;
 - (b) an organisation of employees that is bound by the agreement immediately before the agreement ceases operating;

- (c) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of an employee referred to in paragraph (a) and has been requested by the employee to apply for the order on the employee's behalf;
- (d) a workplace inspector.

21D Preservation of redundancy provisions in preserved individual State agreements in certain circumstances

- (1) This clause applies if a preserved individual State agreement is terminated, on application by the employer in relation to the agreement, by the Commission in accordance with subsection 170VM(3) of the pre-reform Act.

Note: Subsection 170VM(3) of the pre-reform Act applies because of subclause 21(3) of this Schedule and paragraph 17(1)(c) of Schedule 7.

- (2) The employer and the employee in relation to the preserved individual State agreement continue to be bound, immediately after the agreement ceases operating, by any redundancy provision that was included in the agreement as if the agreement had continued operating.
- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subclause (2) as if the provision was a preserved individual State agreement in operation.
- (3) Subject to subclause (4), a redundancy provision referred to in subclause (2) prevails over any other redundancy provision included in any other instrument that would otherwise have effect.
- (4) The employer continues to be bound by a redundancy provision referred to in subclause (2), in relation to the employee, until the earliest of the following:
 - (a) the end of the period of 12 months from the time that the preserved individual State agreement ceases operating;
 - (b) the time when the employee ceases to be employed by the employer;
 - (c) the time when a workplace agreement comes into operation in relation to the employee and the employer.
- (5) In this clause:

instrument means any of the following:

- (a) a pre-reform certified agreement (within the meaning of Schedule 7);
- (b) a notional agreement preserving State awards;
- (c) an award.

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

21E Notification of preservation of redundancy provisions

- (1) This clause applies if the employer and the employee in relation to a preserved individual State agreement will, under clause 21D, continue to be bound by one or more redundancy provisions included in the agreement.
- (2) The determination issued by the Commission under subsection 170VM(4) of the pre-reform Act must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the employer and the employee in relation to the preserved individual State agreement will be bound by the provision or provisions; and
 - (c) specify the date that is 12 months after the time that the determination terminating the agreement takes effect; and
 - (d) state that the employer and the employee will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 21D(4).

23 After Part 5 of Schedule 9

Insert:

Part 5A—Transmission of preserved redundancy provisions

27A Transmission of preserved redundancy provisions

- (1) If:
 - (a) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) an employee;

were bound, under clause 6A or 20A of Schedule 7, clause 21A or 21D of Schedule 8, or because of a previous application of this clause, by a redundancy provision that was previously included in an agreement that was terminated; and
 - (b) the employee is a transferring employee;

the new employer is bound by the redundancy provision in relation to the transferring employee by force of this clause.

Note: The new employer must notify the transferring employee and lodge a copy of the notice with the Employment Advocate (see clauses 29A and 29B).

- (2) Subject to subclause (3), the redundancy provision prevails over any other redundancy provision included in any other instrument that would otherwise have effect, to the extent of any inconsistency.

Period for which new employer remains bound

- (3) The new employer remains bound by the redundancy provision in relation to the transferring employee, by force of this clause, until the earliest of the following:
 - (a) the end of the period of 12 months from the time that the agreement referred to in paragraph (1)(a) ceased operating;

- (b) the time when the transferring employee ceases to be employed by the new employer;
- (c) the time when a workplace agreement comes into operation in relation to the new employer and the transferring employee.

Old employer's rights and obligations that arose before time of transmission not affected

- (4) This clause does not affect the rights and obligations of the old employer that arose before the time of transmission.

Definitions

- (5) In this clause:

instrument means any of the following:

- (a) a workplace agreement;
- (b) a pre-reform certified agreement (within the meaning of Schedule 7);
- (c) a preserved State agreement;
- (d) a notional agreement preserving State awards;
- (e) an award;
- (f) a transitional award (within the meaning of Schedule 6).

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

24 After clause 29 of Schedule 9

Insert:

29A Informing transferring employees about transmission of preserved redundancy provisions

- (1) This clause applies if an employer is bound, by force of clause 27A, by one or more redundancy provisions (within the meaning of that clause) in relation to a transferring employee.
- (2) Within 28 days after the transferring employee starts being employed by the employer, the employer must take reasonable steps to give the transferring employee a written notice that complies with subclause (3).

Note: This is a civil remedy provision, see clause 31.

- (3) The notice must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the employer is bound by the provision or provisions; and

- (c) specify the date that is 12 months after the time that the agreement that included the provision or provisions ceased operating; and
 - (d) state that the employer will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 27A(3).
- (4) Subclause (2) does not apply if a workplace agreement comes into operation in relation to the employer and the transferring employee within 14 days of the time of transmission.

29B Lodging copy of notice about preserved redundancy provisions with Employment Advocate

- (1) If an employer gives a notice under clause 29A to a transferring employee, the employer must lodge a copy of the notice with the Employment Advocate within the period specified in subclause (2). The copy must be lodged in accordance with subclause (3).

Note 1: This is a civil remedy provision, see clause 31.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (2) The notice must be lodged within 14 days after the day specified in paragraph (a) or (b):
- (a) if the employer gives a notice to an employee in respect of a redundancy provision that was included in a pre-reform AWA or a preserved individual State agreement—the day on which that notice is given; or
 - (b) if the employer gives one or more notices to one or more employees in respect of a redundancy provision that was included in a pre-reform certified agreement or a preserved collective State agreement—the earliest day on which a notice was given.

Lodgment with Employment Advocate

- (3) A notice is lodged with the Employment Advocate in accordance with this subclause only if it is actually received by the Employment Advocate.

Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

25 Subclause 30(1) of Schedule 9

After “29”, insert “or 29B”.

26 Subclause 30(2) of Schedule 9

After “29”, insert “or 29B (as the case requires)”.

27 Subclause 30(3) of Schedule 9

After “29”, insert “or 29B”.

28 At the end of subclause 31(1) of Schedule 9

Add:

- ; (c) subclause 29A(2);
- (d) subclause 29B(1).

29 Subclause 31(4) of Schedule 9

After “an instrument”, insert “, or in relation to a preserved redundancy provision that was previously included in an instrument,”.

30 Subclause 31(4) of Schedule 9 (table items 2 and 4)

After “bound by the agreement”, insert “or the redundancy provision”.

31 Application

The amendments made by this Schedule apply to agreements that are terminated after this item commences.

Page 10 (after line 11), at the end of the bill, add:

Schedule 4—Amendments relating to stand downs***Workplace Relations Act 1996*****1 Subsection 4(1)**

Insert:

authorised stand down means a stand down of an employee that is authorised as mentioned in subsection 691B(1).

2 Subsection 13(1) (after table item 6)

Insert:

6A	Division 7 of Part 12	Stand downs	Section 691C
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3 At the end of paragraph 183(1)(b)

Add:

- (iv) any hours in the week when the employee is stood down (but only if the stand down is an authorised stand down);

4 At the end of Part 12

Add:

Division 7—Stand downs**691A Employer may stand down employees in certain circumstances**

(1) This section applies if:

- (a) an employee employed by an employer cannot usefully be employed during a period because of a particular circumstance; and
- (b) that circumstance is:
 - (i) a strike; or
 - (ii) a breakdown of machinery; or
 - (iii) a stoppage of work for any cause for which the employer cannot reasonably be held responsible; and
- (c) either:
 - (i) there is no contract of employment, and no industrial instrument, that binds the employer in respect of the employment of the employee and that contains provision for the standing down of the employee during that period because of that circumstance; or

- (ii) a contract of employment, or industrial instrument, that binds the employer in respect of the employment of the employee contains provision for the standing down of the employee during that period because of that circumstance, but the employer's right to stand down the employee is dependent on the employer having to apply to the Commission, a State industrial authority or another person or body for an order or determination (however described) authorising the employer to stand down the employee.
- (2) If this section applies, the employer:
 - (a) may stand down the employee during the period referred to in paragraph (1)(a) because of the circumstance referred to in that paragraph; and
 - (b) if the employer stands down the employee under paragraph (a) of this subsection—may deduct payment for the period during which the employee is stood down.
 - (3) A period during which an employee is stood down under subsection (2) does not break the employee's continuity of service.
 - (4) A period during which an employee is stood down under subsection (2) counts as service for all purposes.
 - (5) A provision of a contract of employment or an industrial instrument that provides as mentioned in subparagraph (1)(c)(ii) has no effect. However, this section does not otherwise affect the operation of any provision of a contract of employment or industrial instrument that provides for the standing down of employees.
 - (6) In this section:

industrial instrument means any of the following:

 - (a) a workplace agreement;
 - (b) an award;
 - (c) a pre-reform AWA;
 - (d) a pre-reform certified agreement (within the meaning of Schedule 7);
 - (e) a preserved State agreement;
 - (f) a notional agreement preserving State awards;
 - (g) a workplace determination;
 - (h) an employment agreement (within the meaning of Division 12 of Part 21);
 - (i) an exceptional matters order (within the meaning of Schedule 7);
 - (j) a section 170MX award (within the meaning of Schedule 7);
 - (k) an old IR agreement (within the meaning of Schedule 7).

691B Prohibition of unauthorised stand downs

- (1) An employer must not stand down an employee from his or her employment if the stand down is not authorised by:
 - (a) subsection 691A(2); or

- (b) a provision of a contract of employment, or an industrial instrument (within the meaning of section 691A), that is binding on the employer in respect of the employment of the employee (other than a provision that is rendered of no effect by subsection 691A(5)).

Note 1: Compliance with this subsection is dealt with as follows:

- (a) the model dispute resolution process applies (see subsection (2));
- (b) the Court may grant an injunction (see subsection (3));
- (c) the compliance provisions of Part 14 apply.

Note 2: If the standing down of an employee is not authorised as mentioned in this subsection, the employee may recover any lost wages by taking appropriate enforcement action (whether under this Act or otherwise).

- (2) The model dispute resolution process (other than section 697) applies to a dispute under subsection (1).

Note: The model dispute resolution process is set out in Part 13.

- (3) The Court, or the Federal Magistrates Court, on application by an employee who has been stood down or by an inspector, may grant an injunction requiring the employer of the employee to cease contravening (or not to contravene) subsection (1).

691C Extraterritorial extension

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

- (a) to an employee outside Australia who meets any of the conditions in this section; and
- (b) to the employee's employer (whether the employer is in or outside Australia); and
- (c) to acts, omissions, matters and things relating to the employee or the employee's employment (whether those acts, omissions, matters or things are in or outside Australia).

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

Employee in Australia's exclusive economic zone

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

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

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

On Australia's continental shelf outside exclusive economic zone

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

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

Outside Australia's exclusive economic zone and continental shelf

- (4) Another condition is that the employee:
- (a) is neither in Australia's exclusive economic zone nor in, on or over a part of Australia's continental shelf described in paragraph (3)(a); and
 - (b) is an Australian-based employee of an Australian employer; and
 - (c) is not prescribed by the regulations as an employee to whom this subsection does not apply.
- (5) In this section:

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

5 Section 717 (at the end of the definition of *applicable provision*)

Add:

; and (e) subsection 691B(1) (prohibition of unauthorised stand downs).

6 Subsection 718(1) (at the end of the table)

Add:

- | | | |
|---|--|---|
| 8 | subsection 691B(1) (prohibition of unauthorised stand downs) | (a) an employee to whom subsection 691B(1) applies; |
| | | (b) an inspector |

7 Subsection 718(2)

Omit "and (7)", substitute " (7) and (8)".

8 After Division 7 of Part 21

Insert:

Division 7A—Stand downs

880A Additional effect of Act—stand downs

Without affecting its operation apart from this section, Division 7 of Part 12 also has effect in relation to the employment of any employee in Victoria, and for this purpose:

- (a) each reference in that Division to an employer (within the meaning of that Division) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

- (b) each reference in that Division to an employee (within the meaning of that Division) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and
- (c) each reference in that Division to employment (within the meaning of that Division) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.

9 Section 891

Repeal the section.

10 After paragraph 89(1)(a) of Schedule 6

Insert:

- (aa) section 691A (as applied by section 880A); and

11 After paragraph 95(a) of Schedule 6

Insert:

- (aa) section 691A (as applied by section 880A); and

12 After paragraph 102(a) of Schedule 6

Insert:

- (aa) section 691A (as applied by section 880A); and

Page 10 (after line 11), at the end of the bill, add:

Schedule 5—Amendments relating to the Australian Fair Pay and Conditions Standard

Workplace Relations Act 1996

1 Subsection 189(1)

Repeal the subsection, substitute:

APCS applies and contains frequency of payment provisions

(1) If:

- (a) the employment of an employee is covered by an APCS; and
- (b) the APCS contains frequency of payment provisions that apply in relation to the employee's employment;

then:

- (c) if a workplace agreement that covers the employment of the employee contains frequency of payment provisions:
 - (i) that apply in relation to the employee's employment; and
 - (ii) that provide for payments in respect of periods of one month or less;

the employer must comply with those provisions in relation to the employee; or

- (d) if paragraph (c) does not apply, and the employee's contract of employment contains frequency of payment provisions:
 - (i) that apply in relation to the employee's employment; and
 - (ii) that provide for payments in respect of periods of one month or less;

the employer must comply with those provisions in relation to the employee; or

- (e) if neither paragraph (c) nor (d) applies—the employer must comply with the frequency of payment provisions of the APCS in relation to the employee.

2 After subsection 226(1)

Insert:

- (1A) An employer only contravenes subsection (1) if the employer requests or requires an employee to work more than the hours mentioned in subsection (1), and the employee works those hours.

3 Section 228

Before “In”, insert “(1)”.

4 Section 228 (at the end of the definition of *shift worker*)

Add:

- Note: Subsection (2) enables regulations to be made providing that an employee belonging to a specified class is not a shift worker.

5 At the end of section 228

Add:

- (2) The regulations may provide that an employee:
- (a) who is covered by paragraph (a) or (b) of the definition of *shift worker* in subsection (1); and
 - (b) who belongs to a class specified in the regulations;
- is not a shift worker for the purposes of this Division.
- (3) Without limiting the way in which a class of employees may be described for the purposes of regulations made under subsection (2), the class may be described by reference to one or more of the following:
- (a) a particular industry;
 - (b) a particular kind of work;
 - (c) a particular type of employment;
 - (d) a particular type of shift work (whether described by reference to the organisation or allocation of shifts or otherwise).

6 Paragraph 229(1)(a)

Repeal the paragraph, substitute:

- (a) start with:
- (i) the specified number of hours; or
 - (ii) if the specified number of hours is more than 38 hours—38 hours;

7 After subsection 229(4)

Insert:

Certain types of leave not to count as service

- (4A) For the purposes of subparagraphs (1)(b)(i) and (4)(a)(ii), a period of authorised unpaid leave or unauthorised leave does not count as service in relation to an employee except:
- (a) as expressly provided by:
 - (i) a term or condition of the employee’s employment; or

- (ii) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory; or
- (b) as prescribed by the regulations.

Note: For whether leave guaranteed under this Part counts as service, see subsections 238(2) (annual leave), 260(2) (paid personal leave), 261(2) (unpaid carer's leave) and 316(2) (parental leave).

8 Subsection 229(5) (note 3)

Repeal the note.

9 Paragraph 233(1)(c)

Omit all the words after “no less than”, substitute “the rate that, at the time the election is made, is the employee’s basic periodic rate of pay (expressed as an hourly rate); and”.

10 Subsection 235(1)

Omit all the words after “a period,”, substitute “the employee must be paid a rate for each hour (pro-rated for part hours) of annual leave taken that is no less than the rate that, immediately before the period begins, is the employee’s basic periodic rate of pay (expressed as an hourly rate).”.

11 Subsection 235(2)

Omit all the words after “a particular time,”, substitute “the employee must be paid a rate for each hour (pro-rated for part hours) of the employee’s untaken accrued annual leave that is no less than the rate that, immediately before that time, is the employee’s basic periodic rate of pay (expressed as an hourly rate).”.

12 At the end of section 236

Add:

Entitlement to leave for all nominal hours in a day also extends to other hours on that day

(7) If:

- (a) an employee to whom subparagraph 229(1)(a)(ii) applies is entitled to take annual leave on a particular day; and
- (b) the entitlement covers all the hours (or part hours) on that day that would count towards the nominal hours worked by the employee in the week that includes that day;

the employer is taken to have authorised the employee to be absent from work for any other hours (or part hours) on that day that the employee would otherwise have worked.

Example: Bianca is employed by BBB Bakers Pty Ltd. She works 40 hours per week (consisting of 38 hours plus 2 reasonable additional hours).

Under subsection 232(2), Bianca is entitled to accrue paid annual leave of 1/13 of her nominal hours worked for each completed 4 week period of continuous service with BBB Bakers. Because of subparagraph 229(1)(a)(ii), Bianca’s nominal hours worked in a week are capped at 38 hours. If Bianca works her normal hours for a 12 month period, she will accrue 152 hours of paid annual leave.

The above subsection ensures that Bianca will be able to be absent from work for 4 full 40 hour weeks. Bianca's absence for the additional 8 hours will not be paid leave, and will not count as service, but it will not break her continuity of service (see subsection (8)).

- (8) An absence that is taken by subsection (7) to have been authorised:
 - (a) is not annual leave; and
 - (b) does not break the employee's continuity of service; and
 - (c) does not otherwise count as service.
- (9) For the purposes of subsection (7), if a shift (or other period of work) occurs partly on 1 day and partly on the next day, the shift (or other period of work) is taken to be a day and the remaining parts of the days are taken not to be part of the day.
- (10) For the purposes of subsection (7), the regulations may make provision for either or both of the following:
 - (a) determining what hours (or part hours) on a particular day would count towards the nominal hours worked by an employee in a week;
 - (b) determining what other hours (or part hours) on a particular day would be hours (or part hours) that an employee would otherwise have worked.

13 Section 240

Insert:

basic periodic rate of pay has the meaning given by section 178.

Note: See also section 243.

14 Paragraph 241(1)(a)

Repeal the paragraph, substitute:

- (a) start with:
 - (i) the specified number of hours; or
 - (ii) if the specified number of hours is more than 38 hours—
38 hours;

15 After subsection 241(4)

Insert:

Certain types of leave not to count as service

- (4A) For the purposes of subparagraphs (1)(b)(i) and (4)(a)(ii), a period of authorised unpaid leave or unauthorised leave does not count as service in relation to an employee except:
 - (a) as expressly provided by:
 - (i) a term or condition of the employee's employment; or
 - (ii) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory; or
 - (b) as prescribed by the regulations.

Note: For whether leave guaranteed under this Part counts as service, see subsections 238(2) (annual leave), 260(2) (paid personal leave), 261(2) (unpaid carer's leave) and 316(2) (parental leave).

16 Subsection 241(5) (note 3)

Repeal the note.

17 Section 243

Repeal the section, substitute:

243 Regulations may prescribe different definitions for piece rate employees

The regulations may prescribe:

- (a) a different definition of *basic periodic rate of pay* for the purposes of the application of this Division in relation to piece rate employees; and
- (b) a different definition of *nominal hours worked* for the purposes of the application of this Division in relation to piece rate employees.

18 After section 245

Insert:

245A Entitlement to cash out an amount of paid personal/carer's leave

- (1) This section applies to an employee if more than the protected amount of paid personal/carer's leave is credited to the employee.
- (2) The employee is entitled to forgo an entitlement to take any or all of the amount of paid personal/carer's leave credited to the employee that exceeds the protected amount of paid personal/carer's leave if:
 - (a) a provision in a workplace agreement binding the employee and the employer entitles the employee to forgo the entitlement to the amount of paid personal/carer's leave; and
 - (b) the employee gives the employer a written election to forgo the amount of paid personal/carer's leave; and
 - (c) a provision in a workplace agreement binding the employee and the employer entitles the employee to receive pay in lieu of the amount of paid personal/carer's leave at a rate that is no less than the rate that, at the time the election is made, is the employee's basic periodic rate of pay (expressed as an hourly rate); and
 - (d) the employer authorises the employee to forgo the amount of paid personal/carer's leave.

Note: If, under this section, an employee forgoes an entitlement to take an amount of paid personal/carer's leave, the employee's employer may deduct that amount from the amount of accrued paid personal/carer's leave credited to the employee.

- (3) For the purposes of subsections (1) and (2), the *protected amount of paid personal/carer's leave* for the employee is $\frac{3}{52}$ of the number of nominal hours worked by the employee for the employer during:
 - (a) a continuous period of 12 months of service with the employer ending immediately before the day on which the employee makes an election under paragraph (2)(b); or
 - (b) a sequence of periods totalling 12 months of service with the employer, the last of which ends immediately before the day on which the employee makes an election under paragraph (2)(b).

Note: The protected amount of paid personal/carer's leave for an employee whose nominal hours worked for an employer each week over a continuous period of 12 months service with the employer are 38 hours would be 114 hours (which would be equivalent to 15 days of paid personal/carer's leave for that employee).

- (4) An employer must not:
- (a) require an employee to forgo an entitlement to take an amount of paid personal/carer's leave; or
 - (b) exert undue influence or undue pressure on an employee in relation to the making of a decision by the employee whether or not to forgo an entitlement to take an amount of paid personal/carer's leave.
- (5) If, under this section, an employee forgoes an entitlement to take an amount of paid personal/carer's leave, the employer must, within a reasonable period, give the employee the amount of pay that the employee is entitled to receive in lieu of the amount of paid personal/carer's leave.

19 Section 247

Omit all the words after "a period," substitute "the employee must be paid a rate for each hour (pro-rated for part hours) of paid personal/carer's leave taken that is no less than the rate that, immediately before the period begins, is the employee's basic periodic rate of pay (expressed as an hourly rate)."

20 After section 247

Insert:

247A Entitlement to leave for all nominal hours in a day also extends to other hours on that day

- (1) If:
- (a) an employee to whom subparagraph 241(1)(a)(ii) applies is entitled to take paid personal/carer's leave on a particular day; and
 - (b) the entitlement covers all the hours (or part hours) on that day that would count towards the nominal hours worked by the employee in the week that includes that day;

the employer is taken to have authorised the employee to be absent from work for any other hours (or part hours) on that day that the employee would otherwise have worked.

Example: Tina is employed by Terrific Videos Pty Ltd. She works 8 hours a day for 5 days a week, giving a weekly total of 40 hours per week (consisting of 38 hours plus 2 reasonable additional hours).

Under subsection 246(2), Tina is entitled to accrue paid personal/carer's leave of $\frac{1}{26}$ of her nominal hours worked for each completed 4 week period of continuous service with Terrific Videos. Because of subparagraph 241(1)(a)(ii), Tina's nominal hours worked in a week are capped at 38 hours. If Tina works her normal hours for a 12 month period, she will accrue 76 hours of paid personal/carer's leave.

The above subsection ensures that Tina will be able (subject to the requirements of this Division relating to entitlement to paid personal/carer's leave) to be absent from work for 10 full 8 hour days. Tina's absence for the additional 4 hours over those 10 days will not be paid leave, and will not count as service, but it will not break her continuity of service (see subsection (2)).

- (2) An absence that is taken by subsection (1) to have been authorised:
 - (a) is not paid personal/carer's leave; and
 - (b) does not break the employee's continuity of service; and
 - (c) does not otherwise count as service.
- (3) For the purposes of subsection (1), if a shift (or other period of work) occurs partly on 1 day and partly on the next day, the shift (or other period of work) is taken to be a day and the remaining parts of the days are taken not to be part of the day.
- (4) For the purposes of subsection (1), the regulations may make provision for either or both of the following:
 - (a) determining what hours (or part hours) on a particular day would count towards the nominal hours worked by an employee in a week;
 - (b) determining what other hours (or part hours) on a particular day would be hours (or part hours) that an employee would otherwise have worked.

21 Section 259

Omit all the words after "a period," substitute "the employee must be paid a rate for each hour (pro-rated for part hours) of compassionate leave taken that is no less than the rate that, immediately before the period begins, is the employee's basic periodic rate of pay (expressed as an hourly rate)."

22 Section 262

Before "This", insert "(1)".

23 At the end of section 262

Add:

- (2) This Division establishes minimum entitlements and so is intended to supplement, and not to override, entitlements under other Commonwealth legislation.

24 Section 263

Insert:

basic periodic rate of pay has the meaning given by section 178.

Note: See also section 264A.

25 Section 263 (definition of employee)

Omit "section 262", substitute "subsection 262(1)".

26 Section 263

Insert:

piece rate employee means an employee who is paid a piece rate of pay within the meaning of section 178.

27 At the end of Subdivision A of Division 6 of Part 7

Add:

264A Regulations may prescribe different definition for piece rate employees

The regulations may prescribe a different definition of *basic periodic rate of pay* for the purposes of the application of this Division in relation to piece rate employees.

28 At the end of subsection 268(2)

Add:

Note: An employer may ask an employee to give the employer a statement from a medical practitioner as to the employee's fitness to work (see subsections 274(2) and (2A)).

29 Subsection 268(3)

Omit all the words after "a period," substitute "the employee must be paid a rate for each hour (pro-rated for part hours) of paid leave taken that is no less than the rate that, immediately before the period begins, is the employee's basic periodic rate of pay (expressed as an hourly rate)."

30 After subsection 274(2)

Insert:

(2A) If the employee takes paid leave under subparagraph 268(2)(b)(i) or (ii) during the period of 6 weeks before the expected date of birth, the employer may, at any time during the period of leave, ask the employee to give the employer a medical certificate from a medical practitioner containing a statement of the medical practitioner's opinion of whether the employee is fit to work.

31 At the end of subsection 318(3)

Add:

Note: For the purposes of subsection (3), *employer*, *employee* and *employment* have their ordinary meaning. See sections 5, 6 and 7 and Schedule 2.

32 After paragraph 2(1)(g) of Schedule 2

Insert:

(ga) a reference in Division 7 of Part 7 so far as the reference relates to Division 6 of Part 7 as applied by section 689.

33 After paragraph 3(1)(c) of Schedule 2

Insert:

(ca) a reference in Division 7 of Part 7 so far as the reference relates to Division 6 of Part 7 as applied by section 689.

34 After paragraph 4(1)(c) of Schedule 2

Insert:

(ca) a reference in Division 7 of Part 7 so far as the reference relates to Division 6 of Part 7 as applied by section 689.

35 Saving provision—annual leave

The amendment of the *Workplace Relations Act 1996* made by item 6 does not affect any entitlement to annual leave that an employee had accrued before the commencement of that item.

36 Saving provision—paid personal/carer's leave

The amendment of the *Workplace Relations Act 1996* made by item 14 does not affect any entitlement to paid personal/carer's leave that an employee had accrued before the commencement of that item.

Page 10 (after line 11), at the end of the bill, add:

Schedule 6—Other amendments***Workplace Relations Act 1996*****1 Paragraph 165(1)(e)**

After “purposes of” (first occurring), insert “this paragraph or”.

2 After subsection 165(1)

Insert:

- (1A) To avoid doubt, a disclosure in accordance with subsection (1) of personal information (within the meaning of the *Privacy Act 1988*) is taken, for the purposes of that Act, to be authorised by law.

3 At the end of section 170

Add:

- (5) To avoid doubt, a disclosure in accordance with this section of personal information (within the meaning of the *Privacy Act 1988*) is taken, for the purposes of that Act, to be authorised by law.

4 Subsection 337(5)

Repeal the subsection, substitute:

- (5) If a waiver has been made under section 338 in relation to the workplace agreement:
- (a) subsection (1) and paragraph (3)(b) do not apply if, before the time the waiver was made, the employer had taken reasonable steps to ensure that all eligible employees in relation to the agreement (as at that time) either had, or had ready access to, the agreement in writing; and
 - (b) subsection (2) does not apply if, before the time the waiver was made, the employer had taken reasonable steps to ensure that all eligible employees in relation to the agreement (as at that time) had been given an information statement in relation to the agreement that complies with subsection (4).

5 At the end of section 338

Add:

Note: For the effect of the waiver, see subsection 337(5).

Note: The heading to section 338 is replaced by the heading “**Employees may waive 7-day period**”.

6 At the end of Division 5 of Part 8

Add:

346A Employer to provide copy of lodged AWA to employee

- (1) As soon as practicable after an employer lodges an AWA with the Employment Advocate, the employer must give a copy of the AWA to the employee whose employment is subject to the AWA.
- (2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

7 After subsection 347(2)

Insert:

(2A) If:

- (a) an employer and an employee or employees of the employer, or an organisation of employees, make a workplace agreement (within the meaning of section 333); and
- (b) the employer does not lodge that workplace agreement (the *unlodged agreement*), but subsequently lodges a declaration under subsection 344(2); and
- (c) the declaration purports to identify as parties to a workplace agreement:
 - (i) the employer who lodged the declaration; and
 - (ii) at least one employee, class of employees or organisation; and
- (d) the employer and the other parties identified in the declaration are parties to the unlodged agreement; and
- (e) a document that is different from the unlodged agreement is attached to the declaration;

then:

- (f) the unlodged agreement comes into operation as a workplace agreement at the time the declaration is lodged; and
- (g) the document that is attached to the declaration does not come into operation as a workplace agreement.

8 Subsection 370(5)

Repeal the subsection, substitute:

- (5) If a waiver has been made under section 371 in relation to the variation to the workplace agreement:
 - (a) subsection (1) and paragraph (3)(b) do not apply if, before the time the waiver was made, the employer had taken reasonable steps to ensure that all eligible employees in relation to the agreement (as at that time) either had, or had ready access to, the variation in writing; and
 - (b) subsection (2) does not apply if, before the time the waiver was made, the employer had taken reasonable steps to ensure that all eligible employees in relation to the agreement (as at that time) had been given an information statement in relation to the variation that complies with subsection (4).

9 At the end of section 371

Add:

Note: For the effect of the waiver, see subsection 370(5).

Note: The heading to section 371 is replaced by the heading “**Employees may waive 7-day period**”.

10 After paragraph 392(2)(b)

Insert:

(ba) in the case of an AWA—the employee whose employment is subject to the agreement;

11 After paragraph 393(2)(b)

Insert:

(ba) in the case of an AWA—the employee whose employment is subject to the agreement;

12 After paragraph 407(2)(j)

Insert:

(ja) for subsection 346A(1)—30 penalty units;

13 At the end of subsection 482(1)

Add “, whether or not the ballot is completed”.

14 At the end of subsection 482(2)

Add “, whether or not the ballot is completed”.

15 Subsection 482(3)

Omit “have effect”, substitute “are, in relation to completed ballots,”.

16 After paragraph 483(1)(a)

Insert:

(aa) the ballot has been completed; and

Note: The heading to section 483 is altered by inserting “**completed**” after “**of**”.

17 Section 611 (after paragraph (a) of the definition of *public holiday*)

Insert:

(aa) a day that, under (or in accordance with a procedure under) a law of a State or Territory, is substituted for a day referred to in paragraph (a); and

18 Section 611 (subparagraph (b)(i) of the definition of *public holiday*)

Repeal the subparagraph.

19 At the end of section 710

Add:

; or (c) the matter is the subject of proceedings or has already been settled as a result of proceedings, whether before a court or another body, under a law of the Commonwealth or of a State or Territory relating to the prevention of discrimination or to equal opportunity.

20 Subparagraph 846(2)(g)(i)

Omit “5”, substitute “10”.

21 Subparagraph 846(2)(g)(ii)

Omit “25”, substitute “50”.

22 Paragraph 864(1)(b)

Repeal the paragraph, substitute:

(b) is:

- (i) of a rate provision; or
- (ii) of a casual loading provision; or
- (iii) of a frequency of payment provision.

23 Subsection 864(4)

Insert:

frequency of payment provision has the same meaning as in Division 2 of Part 7.

24 After paragraph 3(1)(h) of Schedule 2

Insert:

(ha) a reference in Division 2 of Part 4 of Schedule 7.

25 Paragraph 72H(2)(c) of Schedule 6

Omit all the words after “apply”, substitute “according to its terms, to the transferring transitional employee’s employment with the new transitional employer;”.

26 Subclause 72H(2) of Schedule 6

Omit “the transmitted award, to the extent to which it relates to the transferring transitional employee’s employment with the new transitional employer, prevails over that certified agreement to the extent of any inconsistency with that certified agreement.”, substitute “the certified agreement does not apply to the transferring transitional employee.”.

27 Paragraph 77(3)(a) of Schedule 6

Repeal the paragraph, substitute:

- (a) the matter referred to in paragraph (1)(g) does not include one or both of the following:
 - (i) special maternity leave (within the meaning of section 265);
 - (ii) the entitlement under section 268 to transfer to a safe job or to take paid leave; and

28 Paragraph 97(4)(a) of Schedule 6

Repeal the paragraph, substitute:

- (a) the matter referred to in paragraph (2)(ac) does not include one or both of the following:
 - (i) special maternity leave (within the meaning of section 265);
 - (ii) the entitlement under section 268 to transfer to a safe job or to take paid leave; and

29 Clause 1 of Schedule 7

Insert:

transitional award has the same meaning as in Schedule 6.

30 At the end of clause 2 of Schedule 7

Add:

Note: Clause 5 of this Schedule, section 16 and Schedule 8 may also affect the terms and conditions of employment of an employee in relation to whom a pre-reform certified agreement is in operation.

31 Subclause 5(1) of Schedule 7

Repeal the subclause, substitute:

- (1) While a pre-reform certified agreement is in operation, it prevails, to the extent of any inconsistency, over:
 - (a) a preserved State agreement; or
 - (b) a notional agreement preserving State awards.

32 At the end of clause 17 of Schedule 7

Add:

Note: Clause 19 of this Schedule, section 16 and Schedule 8 may also affect the terms and conditions of employment of an employee in relation to whom a pre-reform AWA is in operation.

33 Paragraph 19(d) of Schedule 7

Repeal the paragraph, substitute:

- (d) to the extent of any inconsistency, a notional agreement preserving State awards;

34 Before clause 22 of Schedule 7

Insert:

Division 1—Continuing operation of section 170MX awards

35 Clause 22 of Schedule 7

Repeal the clause, substitute:

22 Application of Division

This Division applies to a section 170MX award if:

- (a) the employer in relation to the section 170MX award:
 - (i) is an employer (within the meaning of subsection 6(1)) at the reform commencement; or
 - (ii) becomes such an employer during the transitional period; and
- (b) the section 170MX award:
 - (i) was in force just before the reform commencement; or
 - (ii) was made after the reform commencement because of Part 8 of this Schedule.

36 Subclause 23(1) of Schedule 7

Omit “the award”, substitute “a section 170MX award to which this Division applies”.

37 Clause 24 of Schedule 7

Omit “the award”, substitute “a section 170MX award to which this Division applies”.

38 Clause 25 of Schedule 7

After “section 170MX award” (wherever occurring), insert “to which this Division applies”.

39 Subclause 26(1) of Schedule 7

After “section 170MX award”, insert “to which this Division applies”.

40 At the end of Part 4 of Schedule 7

Add:

Division 2—Special rules for section 170MX awards that bind excluded employers**26A Application of Division**

- (1) This Division applies to a section 170MX award if:
 - (a) the employer in relation to the section 170MX award is an excluded employer at the reform commencement; and
 - (b) the section 170MX award:
 - (i) was in force just before the reform commencement; or
 - (ii) was made after the reform commencement because of Part 8 of this Schedule.
- (2) This Division applies to the section 170MX award while the employer remains an excluded employer during the transitional period.

26B Cessation of section 170MX award

- (1) A section 170MX award to which this Division applies ceases to be in operation:
 - (a) at the end of the transitional period; or
 - (b) when it has been replaced by a State employment agreement.
- (2) To avoid doubt, this clause does not affect any rights accrued or liabilities incurred under a section 170MX award to which this Division applies before it ceases to be in operation.
- (3) To avoid doubt, if the employer in relation to a section 170MX award to which this Division applies becomes an employer (within the meaning of subsection 6(1)) at a time before the end of the transitional period, subclause (1) does not apply after that time.

Note: On and after that time, Division 1 of this Part applies to the section 170MX award.
- (4) Once a section 170MX award to which this Division applies has ceased operating, it can never operate again.

26C Continuing operation of section 170MX awards—under old provisions

- (1) Subject to this Schedule, provisions of the pre-reform Act (including regulations made under that Act) relating to section 170MX of the pre-reform Act continue to apply in relation to a section 170MX award to which this Division applies, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*.
- (2) Subclause (1) does not apply in relation to the following provisions of the pre-reform Act:
 - (a) section 170MN;

- (b) subsections 170MZ(4) and (5);
- (c) paragraph 170MZ(6)(b);
- (d) subsections 170MZ(7) and (8).

26D Continuing operation of section 170MX awards—under new provisions

Subject to this Schedule, the following provisions of this Act apply in relation to a section 170MX award to which this Division applies as if it were a workplace determination:

- (a) Part 6;
- (b) section 494;
- (c) subsection 451(2);
- (d) Part 14;
- (e) Part 15.

26E Interaction of section 170MX awards with other instruments

While a section 170MX award to which this Division applies is in operation, it prevails over a transitional award to the extent of any inconsistency.

41 Clause 30 of Schedule 7

Repeal the clause, substitute:

30 Relationships between pre-reform agreements etc. and Australian Fair Pay and Conditions Standard

- (1) The Australian Fair Pay and Conditions Standard does not apply to an employee in relation to a matter if the employee's employment is subject to any of the following instruments that deals with that matter in relation to the employee:
 - (a) a pre-reform certified agreement;
 - (b) a pre-reform AWA;
 - (c) a section 170MX award.

- (2) In this clause:

matter means a matter referred to in subsection 171(2).

Note: This means that if a pre-reform certified agreement, a pre-reform AWA or a section 170MX award deals with basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave or parental leave and related entitlements in respect of an employee, the Australian Fair Pay and Conditions Standard will not apply to the employee in respect of that matter.

However, if a pre-reform certified agreement, a pre-reform AWA or a section 170MX award does not deal with basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave or parental leave and related entitlements in respect of an employee, the Australian Fair Pay and Conditions Standard will apply to the employee in respect of that matter.

42 At the end of clause 35 of Schedule 7

Insert:

Note: Section 898 may also affect the terms and conditions of employment of an employee in relation to whom a Victorian reference certified agreement is in operation.

43 At the end of clause 36 of Schedule 7

Insert:

Note: Section 898 may also affect the terms and conditions of employment of an employee in relation to whom a Victorian reference Division 3 pre-reform certified agreement is in operation.

44 At the end of clause 37 of Schedule 7

Insert:

Note: Section 898 may also affect the terms and conditions of employment of an employee in relation to whom a Victorian reference AWA is in operation.

45 Clause 15E of Schedule 8

Repeal the clause, substitute:

15E Relationship between preserved State agreements and Australian Fair Pay and Conditions Standard

- (1) The Australian Fair Pay and Conditions Standard does not apply to an employee in relation to a matter if the employee's employment is subject to a preserved State agreement that deals with that matter in relation to the employee.
- (2) In this clause:

matter means a matter referred to in subsection 171(2).

Note: This means that if a preserved State agreement deals with basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave or parental leave and related entitlements in respect of an employee, the Australian Fair Pay and Conditions Standard will not apply to the employee in respect of that matter.

However, if a preserved State agreement does not deal with basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave or parental leave and related entitlements in respect of an employee, the Australian Fair Pay and Conditions Standard will apply to the employee in respect of that matter.

46 Clause 44 of Schedule 8

After "for a matter", insert "in relation to an employee".

47 Clause 44 of Schedule 8

After "also deals with that matter", insert "in relation to the employee".

48 Paragraph 20(2)(b) of Schedule 9

Repeal the paragraph.

Workplace Relations Amendment (Work Choices) Act 2005**49 Paragraph 5A(a) of Schedule 4**

After "meaning of", insert "paragraph 513(4)(b) of".

50 At the end of item 5A of Schedule 4

Add ", to the extent that the term requires the payment of redundancy pay within the meaning of paragraph 513(4)(b) of the amended Act".

51 Application of items 4 and 5

The amendments made by items 4 and 5 of this Schedule apply only in relation to waivers under section 338 of the *Workplace Relations Act 1996* made on or after the commencement of this item.

52 Application of item 7

- (1) The amendment of the *Workplace Relations Act 1996* made by item 7 of this Schedule applies, and is taken always to have applied, on and from the reform commencement to an unlodged agreement, within the meaning of paragraph 347(2A)(b) of the *Workplace Relations Act 1996*, in relation to which a declaration was lodged on or after the reform commencement.
- (2) In this item:

reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

53 Application of items 8 and 9

The amendments made by items 8 and 9 apply only in relation to waivers under section 371 of the *Workplace Relations Act 1996* made on or after the commencement of this item.

54 Application of items 13 to 16

The amendments made by items 13 to 16 apply to a ballot in respect of which a ballot order is made under section 462 of the *Workplace Relations Act 1996* on or after the commencement of this item.

55 Transitional provision—items 13 to 16

- (1) This item applies to a ballot in respect of which a ballot order was made under section 462 of the *Workplace Relations Act 1996* before the commencement of this item if:
 - (a) the authorised ballot agent for the ballot was the Australian Electoral Commission; and
 - (b) the Australian Electoral Commission certifies that the ballot had not been completed at the commencement of this item.
- (2) After the commencement of this item, section 483 of the *Workplace Relations Act 1996* is taken to apply to the incomplete ballot as if the ballot had been completed at the time of the certification referred to in paragraph (1)(b), so far as section 483 relates to costs:
 - (a) incurred by the Australian Electoral Commission; and
 - (b) in respect of which, had the applicant been liable for the costs of the incomplete ballot, the applicant's liability would have been able to have been discharged under subsections 483(5) and (6).
- (3) To avoid doubt, this item does not affect any liability of the applicant in relation to the cost of holding the incomplete ballot and, in particular, does not impose any additional liability upon the applicant.

56 Application of items 25 and 26

- (1) The amendments of the *Workplace Relations Act 1996* made by items 25 and 26 of this Schedule apply, and are taken always to have applied, on and from the reform commencement, in relation to a transferring transitional employee.

- (2) In this item:

reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

transferring transitional employee has the same meaning as in clause 72H of Schedule 6 to the *Workplace Relations Act 1996*.

57 Application of items 24, 29 and 34 to 40

- (1) The amendments of the *Workplace Relations Act 1996* made by items 24, 29 and 34 to 40 of this Schedule apply, and are taken always to have applied, on and from the reform commencement, in relation to a section 170MX award (within the meaning of the *Workplace Relations Act 1996*).
- (2) However, subitem (1) does not authorise the imposition of a civil penalty under Part 14 of the *Workplace Relations Act 1996* for a breach that occurred before the commencement of this item.
- (3) In this item:

reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

58 Application of items 31 and 33

- (1) The amendments of the *Workplace Relations Act 1996* made by items 31 and 33 of this Schedule apply, and are taken always to have applied, on and from the reform commencement, in relation to a pre-reform certified agreement, a preserved State agreement, a notional agreement preserving State awards or a pre-reform AWA that is in operation on the reform commencement, whether or not the pre-reform certified agreement, the preserved State agreement, the notional agreement preserving State awards or the pre-reform AWA is in operation at the commencement of this item.
- (2) However, subitem (1) does not authorise the imposition of a civil penalty under Part 14 of the *Workplace Relations Act 1996* for a breach that occurred before the commencement of this item.
- (3) In this item:

reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

59 Application of items 41 and 45

- (1) The amendments of the *Workplace Relations Act 1996* made by items 41 and 45 of this Schedule apply, and are taken always to have applied, on and from the reform commencement, in relation to an employee (including, but not limited to, for the purposes of Division 7 of Part 7 of that Act).
- (2) However, subitem (1) does not authorise the imposition of a civil penalty under Part 14 of the *Workplace Relations Act 1996* for a breach that occurred before the commencement of this item.
- (3) In this item:

reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

60 Application of items 46 and 47

- (1) The amendments of the *Workplace Relations Act 1996* made by items 46 and 47 of this Schedule apply, and are taken always to have applied, on and from the reform commencement, in relation to an employee.
- (2) However, subitem (1) does not authorise the imposition of a civil penalty under Part 14 of the *Workplace Relations Act 1996* for a breach that occurred before the commencement of this item.
- (3) In this item:
reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

61 Application of item 48

- (1) The amendment of the *Workplace Relations Act 1996* made by item 48 of this Schedule applies, and is taken always to have applied, on and from the reform commencement, in relation to a transferring employee.
- (2) However, subitem (1) does not authorise the imposition of a civil penalty under Part 14 of the *Workplace Relations Act 1996* for a breach that occurred before the commencement of this item.
- (3) In this item:
reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.
transferring employee has the same meaning as in clause 20 of Schedule 9 to the *Workplace Relations Act 1996*.

62 Application of items 49 and 50

- (1) The amendments of the *Workplace Relations Amendment (Work Choices) Act 2005* made by items 49 and 50 of this Schedule apply, and are taken always to have applied, on and from the reform commencement, in relation to a pre-reform award or a transitional award within the meaning of the *Workplace Relations Act 1996*.
- (2) In this item:
reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 32

Senators—

Adams	Ellison	Johnston	Nash
Barnett	Ferguson	Joyce	Parry (Teller)
Bernardi	Ferris	Kemp	Patterson
Brandis	Fielding	Lightfoot	Payne
Campbell, Ian	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Chapman	Fifield	Macdonald, Sandy	Troeth
Colbeck	Heffernan	McGauran	Trood
Eggleston	Humphries	Minchin	Watson

NOES, 28

Senators—

Allison	Faulkner	Marshall	Polley
Bartlett	Forshaw	McEwen (Teller)	Ray
Bishop	Hogg	McLucas	Siewert
Brown, Bob	Hurley	Milne	Stephens
Brown, Carol	Kirk	Moore	Sterle
Crossin	Ludwig	Murray	Webber
Evans	Lundy	O'Brien	Wortley

Question agreed to.

On the motion of Senator Abetz the following amendment was debated and agreed to:

Schedule 2, item 2, page 8 (lines 9 to 12), omit the item, substitute:

2 Subsection 819(1)

Omit “or subparagraph 906(2)(b)(iv), paragraph 906(2)(c) or subsection 906(4)”.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 2, item 4.

Question—That Schedule 2, item 4 stand as printed—put and negatived.

Senator Murray moved the following amendments together by leave:

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

1J After subsection 5(1)

Insert:

- (1A) A person (the *worker*) who contracts to supply his or her labour to another party is to be presumed to do so as an employee, unless it can be shown that the other party is a client or customer of a business genuinely carried on by the worker.
- (1B) 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; or
 - (c) the labour is to be used to achieve a particular result.
- (1C) In determining whether a worker is genuinely carrying on a business, a court must have regard to the following factors:
 - (a) the extent of the control exercised over the worker by the other party;
 - (b) the extent to which the worker is integrated into, or represented to the public as part of, the other party's business or organisation;
 - (c) the degree to which the worker is or is not economically dependent on the other party;
 - (d) whether the worker actually engages others to assist in providing the relevant labour;
 - (e) whether the worker has business premises (in the sense used in the personal services income legislation); and

- (f) whether the worker has performed work for two or more unrelated clients in the past year, as a result of the worker advertising his or her services to the public.
- (1D) A court is to have regard for this purpose to:
 - (a) the practical reality of each relationship, and not merely the formally agreed terms; and
 - (b) the objects of the statutory provisions in respect to which it is necessary to determine the issue of employment status.
- (1E) 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.
- (1F) If:
 - (a) an arrangement is made to supply the labour of a person (the *worker*) to another party (the *ultimate employer*) through a contract or a 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 factors similar to those set out in subsection (1C);
 the worker is to be deemed to be the employee of the ultimate employer.

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

1K Subsection 5(3)

Repeal the subsection, substitute:

- (3) In this Act, a reference to employee with its ordinary meaning is a reference to an individual who contracts, or usually contracts, to supply his or her labour as an employee (within the meaning of subsections (1A) to (1F)) to an employer within the ordinary meaning of that term as defined in section 6.

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

1L At the end of section 5

Add:

- (5) Subsections (1A) to (1F) do not apply in relation to:
 - (a) a law of a State or Territory, to the extent that the law applies to a services contract to which an outworker is a party; or
 - (b) a law of a State or Territory, to the extent that the law applies to a services contract that relates to the performance of road transport work by the independent contractor, other than a services contract to which an independent contractor that is a body corporate is a party, unless the road transport work to which the contract relates is wholly or mainly performed by a director of the body corporate or a member of the family of a director of the body corporate; or
 - (c) without limiting paragraph (b), any of the following laws:

- (i) Chapter 6 of the *Industrial Relations Act 1996* of New South Wales (and any other provision of that Act to the extent that it relates to, or has effect for the purposes of a provision of Chapter 6);
 - (ii) the *Owner Drivers and Forestry Contractors Act 2005* of Victoria;
 - (iii) any instrument made under a provision of a law referred to in subparagraph (i) or (ii); or
 - (d) a law of a State or Territory that is specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified.
- (6) Notwithstanding anything else contained in this section, a reference in this Act to employee does not include, and is not to be taken as meaning, any of the following:
- (a) a person who is a party as a carrier to a contract of carriage as defined in section 309 of the *Industrial Relations Act 1996* of New South Wales and to whom that State Act (apart from anything contained in this Act) is capable of having application;
 - (b) a person who is an owner driver as defined in subsection 4(1) of the *Owner Drivers and Forestry Contractors Act 2005* of Victoria and to whom that State Act (apart from anything contained in this Act) is capable of having application;
 - (c) a person who is a haulage contractor as defined in subsection 5(1) of the *Owner Drivers and Forestry Contractors Act 2005* of Victoria and to whom that State Act (apart from anything contained in this Act) is capable of having application.

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

1M Subsection 6(3)

Repeal the subsection, substitute:

- (3) In this Act, a reference to employer with its ordinary meaning is a reference to a person to whom another person contracts, or usually contracts, to supply his or her labour as an employee (within the meaning of subsections 5(1A) to (1F)).

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

1N At the end of section 7

Add:

- (3) In this Act, a reference to employment with its ordinary meaning is a reference to an arrangement whereby a person contracts, or usually contracts, to supply his or her labour as an employee (within the meaning of subsections 5(1A) to (1F)).

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 29

Senators—

Allison	Faulkner	McEwen (Teller)	Stephens
Bartlett	Forshaw	McLucas	Sterle
Bishop	Hogg	Milne	Webber
Brown, Bob	Hurley	Moore	Wong
Brown, Carol	Kirk	Murray	Wortley
Carr	Ludwig	O'Brien	
Crossin	Lundy	Polley	
Evans	Marshall	Siewert	

NOES, 33

Senators—

Abetz	Ellison	Joyce	Patterson
Adams	Ferguson	Kemp	Payne
Barnett	Ferris	Lightfoot	Ronaldson
Bernardi	Fielding	Macdonald, Ian	Troeth
Brandis	Fierravanti-Wells	Macdonald, Sandy	Trood
Campbell, Ian	Fifield	McGauran	Watson
Chapman	Heffernan	Minchin	
Colbeck	Humphries	Nash	
Eggleston	Johnston	Parry (Teller)	

Question negatived.

Senator Murray moved the following amendments together by leave:

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

1A Section 762

Repeal the section.

1B Section 813

Repeal the section.

Schedule 1, page 7 (after line 17), at the end of the Schedule, add:

4 Section 165 of Schedule 1

Repeal the section, substitute:

165 Simplified outline

This Chapter deals with the types of employer and employee associations that can be registered and the conditions for their registration (see Part 2). Part 2 also prohibits certain kinds of discriminatory conduct by employers and organisations in relation to the formation and registration of employee associations.

This Chapter also provides that an organisation's registration can be cancelled by the Federal Court or by the Commission. It sets out the grounds and procedures for cancellation, and the consequences of cancellation (see Part 3).

Schedule 1, page 7 (after line 17), at the end of the Schedule, add:

5 Part 5 of Schedule 1

Repeal the Part.

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

Bill, as amended, agreed to.

Bills to be reported with amendments.

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

On the motion of Senator Abetz the report from the committee was adopted.

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

Question put.

The Senate divided—

AYES, 32

Senators—

Abetz	Ellison	Johnston	Nash
Barnett	Ferguson	Joyce	Parry (Teller)
Bernardi	Ferris	Kemp	Patterson
Brandis	Fielding	Lightfoot	Payne
Campbell, Ian	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Chapman	Fifield	Macdonald, Sandy	Troeth
Colbeck	Heffernan	McGauran	Trood
Eggleston	Humphries	Minchin	Watson

NOES, 28

Senators—

Allison	Evans	Marshall	Ray
Bartlett	Faulkner	McEwen (Teller)	Siewert
Bishop	Forshaw	McLucas	Stephens
Brown, Bob	Hogg	Milne	Sterle
Brown, Carol	Kirk	Moore	Webber
Carr	Ludwig	Murray	Wong
Crossin	Lundy	Polley	Wortley

Question agreed to.

Bills read a third time.

5 **ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2006**

Order of the day read for the consideration of the bill in committee of the whole.

In the committee

Bill taken as a whole by leave.

Senator Carr moved the following amendments together by leave:

Schedule 1, page 5 (before line 5), before item 1, insert:

1A After paragraph 3(1)(ca)

Insert:

(cb) to protect Australia from the adverse effects of climate change;
and

1B After subparagraph 3(2)(e)(i)

Insert:

- (ia) establish a climate change trigger to ensure that large scale greenhouse polluting projects are assessed by the Federal Government; and

1C After paragraph 3A(a)

Insert:

- (aa) decision-making processes should consider and minimise where possible the adverse effects of climate change on Australia;

1D After section 3A

Insert:

3B Climate change

The Parliament acknowledges that climate change:

- (a) is the greatest threat to Australia's natural environment;
- (b) will have far-reaching impacts globally, in Australia's region and in Australia, including:
 - (i) possible higher temperatures and lower rainfall in southern Australia;
 - (ii) possible more frequent extreme weather events such as storms, heatwaves and droughts;

impacts to which Australia's natural, rural and urban environments, and many industries, are potentially vulnerable.

1E Subsection 5(5) (before the definition of *Australian aircraft*)

Insert:

adverse effects of climate change means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.

1F Subsection 5(5) (after the definition of *Australian vessel*)

Insert:

climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

1G Subsection 5(5) (after the definition of *Australian vessel*)

Insert:

climate system means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.

1H Subsection 5(5) (after the definition of *Australian vessel*)

Insert:

emissions means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.

11 Subsection 5(5) (after the definition of *Australian vessel*)

Insert:

greenhouse gases means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

Schedule 1, page 16 (after line 14), after item 67, insert:

67A After Subdivision F of Division 1 of Part 3

Insert:

Subdivision FA—Climate change actions**25AA Requirement for approval of climate change actions**

- (1) A person must not knowingly, intentionally or recklessly take a climate change action that has, will have, or will be likely to have, a significant impact on the environment.

Civil penalty:

- (a) for an individual—5,000 penalty units; or
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
- (a) an approval for the person to take the action is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 allows the person to take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that:
 - (i) the action is not a controlled action; or
 - (ii) the action is a controlled action but this section is not a controlling provision for the action.

25AB What is a climate change action?

A *climate change action* means either of the following:

- (a) establishing an industrial plant or other facility which emits, or is likely to emit, more than 500,000 tonnes of carbon dioxide or carbon dioxide equivalent per year; or
- (b) any other action, series of actions, or program of actions, which will lead, or are likely to lead, directly or indirectly, to the emission of more than 500,000 tonnes of carbon dioxide or carbon dioxide equivalent per year.

25AC Requirement for decisions about climate change actions

- (1) In deciding whether or not to approve for the purposes of section 25AA the taking of a climate control action, and what conditions to attach to such an approval, the Minister must consider whether the direct or indirect emissions of carbon dioxide or carbon dioxide equivalent that are likely to result from the action will be minimised by the use of best practice environmental management and low emissions technology.

- (2) For the purpose of subsection (1), *best practice environmental management* and *low emissions technology* are management and technology to achieve an ongoing minimisation of the emissions of carbon dioxide or carbon dioxide equivalent through cost-effective measures assessed against the measures and technology currently used nationally and internationally.

Debate ensued.

Documents: The Minister for the Environment and Heritage (Senator Ian Campbell) tabled the following documents:

Environment and Heritage Legislation Amendment Bill (No. 1) 2006—
Environment, Communications, Information Technology and the Arts—
Standing Committee—Report—Environment and Heritage Legislation
Amendment Bill (No. 1) 2006 [Provisions]—Response to recommendation 1.
Listing of commercially harvested fish species as conservation dependent.

Debate continued.

At 3.45 pm: The Acting Deputy President (Senator Moore) resumed the chair and the Temporary Chair of Committees reported progress.

6 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 4.07 pm till Monday, 4 December 2006 at 12.30 pm.

7 ATTENDANCE

Present, all senators except Senators Boswell, Calvert*, George Campbell*, Conroy*, Coonan, Mason*, Santoro, Stott Despoja and Vanstone (* on leave).

HARRY EVANS
Clerk of the Senate