

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

No. 8

TUESDAY, 18 MARCH 2008

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**1 MEETING OF SENATE**

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

**2 GOVERNMENT DOCUMENTS**

The following government documents were tabled:

Australia Business Arts Foundation Ltd—Financial statements for 2006-07.

*Australian Meat and Live-stock Industry Act 1997*—Live-stock mortalities during exports by sea—Report for the period 1 July to 31 December 2007.

General Practice Education and Training Limited—Report for 2006-07.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Personal identifiers 347/08 to 365/08—Government response to reports by the Commonwealth Ombudsman, dated 13 March 2008 [*Replacement for document previously tabled on 12 March 2008*].

*Research Involving Human Embryos Act 2002*—Report pursuant to section 47B, dated December 2007.

*Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004*—Report on financial assistance granted to each state in respect of 2006.

*Surveillance Devices Act 2004*—Commonwealth Ombudsman's report on inspections of surveillance device records for the period 1 July to 31 December 2007—Australian Crime Commission and Australian Federal Police.

*War Crimes Act 1945*—Report for 2006-07 on the operation of the Act.

**3 UNPARLIAMENTARY LANGUAGE—STATEMENT BY PRESIDENT**

The President made a statement relating to unparliamentary language and a matter raised by the Minister for Climate Change and Water (Senator Wong) during debate on the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 on 17 March 2008.

**4 WORKPLACE RELATIONS AMENDMENT (TRANSITION TO FORWARD WITH FAIRNESS) BILL 2008**

Order of the day read for the adjourned debate on the motion of the Special Minister of State (Senator Faulkner)—That this bill be now read a second time—*and on the amendment moved by the Leader of the Family First Party (Senator Fielding)*:

At the end of the motion, add “but the Senate notes the Government’s proposal for a strong safety net of 10 legislated National Employment Standards for all employees is inadequate because it does not provide for:

(a) meal breaks; and

(b) penalty rates,

for all workers and their families”.

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

Main question put and passed.

Bill read a second time.

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

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*In the committee*

Bill, taken as a whole by leave, debated.

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*Explanatory memorandum:* The Minister for Climate Change and Water (Senator Wong) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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Bill further debated.

Senator Wong moved the following amendment:

- Schedule 1, item 1, page 3 (after line 19), after subparagraph 326(2)(b)(i), insert:
- (ia) did not commence that employment more than 14 days before the day on which the ITEA was made, and had previously been employed by the employer (not being employment that had ceased for the reason that, or for reasons that included the reason that, the employer would re-employ the person under an ITEA); or

Debate ensued.

---

*At 2 pm:* The President resumed the chair and the Temporary Chair of Committees (Senator Watson) reported progress.

## 5 QUESTIONS

Questions without notice were answered.

## 6 MOTIONS TO TAKE NOTE OF ANSWERS

Senator Ronaldson moved—That the Senate take note of the answer given by the Minister for Immigration and Citizenship (Senator Evans) to a question without notice asked by Senator Ronaldson today relating to the Transport Workers Union.

Debate ensued.

Question put and passed.

Senator Bartlett moved—That the Senate take note of the answer given by the Minister for Immigration and Citizenship (Senator Evans) to a question without notice asked by Senator Bartlett today relating to housing affordability.

Question put and passed.

## 7 NOTICES

The Leader of the Australian Democrats (Senator Allison): To move on the next day of sitting—That the Senate—

- (a) notes the comments by the Minister for Education (Ms Gillard) that she is considering extending the Federal Government's method of funding private schools on a socioeconomic basis to the public school system;

- (b) recognises the limitations of this model, as evidenced by the fact that 51 per cent of non-government schools receive more money than they are entitled to on the basis of their socioeconomic status (SES) score and that many issues affect the resourcing needs of schools, aside from socioeconomic status; and
- (c) urges the Government to commit to ensuring that any changes to funding models for public schools:
  - (i) guarantee that no school will lose money, as was promised when the SES model was introduced for private schools funding,
  - (ii) takes into account the proportion of students who have special learning needs as a result of:
    - (A) intellectual or physical disabilities,
    - (B) learning difficulties or disabilities,
    - (C) a language background other than English,
    - (D) Aboriginal or Torres Strait Islander background,
    - (E) geographic isolation, and
    - (F) disruptive behaviour, and
  - (iii) raise the level of per capita funding for primary schools to that of secondary schools in recognition of the importance of early learning. (*general business notice of motion no. 55*)

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

- (a) notes with deep regret the passing of Mr William Alfred (Bill) Brown, OAM on 16 March 2008;
- (b) acknowledges the significant contribution Mr Brown made to:
  - (i) Australia as a member of the Royal Australian Air Force during World War II, seeing action in the Pacific, and
  - (ii) Australian cricket through his career as a batsman, Australian captain and as a mentor to other cricketers;
- (c) notes that at the time of his passing Mr Brown was Australia's oldest surviving test cricketer, and was the last survivor of one of the defining moments in Australian cricket history, the 1934 Test defeat to England at Lords; and
- (d) offers its condolences to his family and friends. (*general business notice of motion no. 56*)

The Minister for Human Services (Senator Ludwig): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to make various amendments of the statute law of the Commonwealth, to repeal certain obsolete Acts, and for related purposes. ***Statute Law Revision Bill 2008.***

The Minister for Broadband, Communications and the Digital Economy (Senator Conroy): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend legislation relating to telecommunications, and for other purposes. ***Telecommunications Legislation Amendment (National Broadband Network) Bill 2008.***

Senator Heffernan: To move on the next day of sitting—That the following matter be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 4 September 2008:

Concerns in relation to meat marketing, with particular reference to the need for effective supervision of national standards and controls and the national harmonisation of regulations applying to the branding and marketing of meat.

The Minister for Human Services (Senator Ludwig): To move on the next day of sitting—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008  
 Interstate Road Transport Charge Amendment Bill 2008  
 Road Transport Charges (Australian Capital Territory) Repeal Bill 2008  
 Telecommunications Legislation Amendment (Communications Fund) Bill 2008  
 Tradex Scheme Amendment Bill 2008.

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*Documents:* Senator Ludwig tabled the following documents:

Consideration of legislation—Statements of reasons [4] for introduction and passage of the bills in the 2008 autumn sittings.

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The Leader of the Australian Greens (Senator Bob Brown): To move on the next day of sitting—That the Senate urges the Government to initiate or support moves to have a fact-finding delegation from the United Nations, or its Human Rights Council, visit Tibet as a matter of urgency. (*general business notice of motion no. 57*)

#### 8 POSTPONEMENTS

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Milne for today, proposing a reference to the Economics Committee, postponed till 19 March 2008.

General business notice of motion no. 49 standing in the name of the Leader of The Nationals in the Senate (Senator Scullion) for today, proposing the establishment of a select committee on remote Indigenous communities, postponed till 19 March 2008.

#### 9 COMMUNITY AFFAIRS—STANDING COMMITTEE—EXTENSION OF TIME TO REPORT

Senator O'Brien, at the request of the Chair of the Community Affairs Committee (Senator Moore) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 46—That the time for the presentation of the report of the Community Affairs Committee on the Poker Machine Harm Reduction Tax (Administration) Bill 2008 be extended to 12 August 2008.

Question put and passed.

#### 10 LEGAL AND CONSTITUTIONAL AFFAIRS—STANDING COMMITTEE—EXTENSION OF TIME TO REPORT

Senator O'Brien, at the request of the Chair of the Legal and Constitutional Affairs Committee (Senator Crossin) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 50—That the time for the presentation of the report of the Legal and Constitutional Affairs Committee on the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008 be extended to 23 June 2008.

Question put and passed.

**11 MIGRATION—JOINT STANDING COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator O'Brien, at the request of Senator McEwen and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 53—That the Joint Standing Committee on Migration be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate.

Question put and passed.

**12 HISTORICAL EVENTS—HMAS SYDNEY II**

Senator Ellison, at the request of the Leader of the Opposition in the Senate (Senator Minchin) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 48—That the Senate—

- (a) welcomes the discovery of the missing wreck HMAS *Sydney II*, 66 years since the tragic battle that lost the ship in 1941 off the coast of Western Australia;
- (b) notes the importance of finding the missing wreck for families and friends of the 645 crew members on board HMAS *Sydney* when she was lost in fierce engagement with the German raider *Kormoran*;
- (c) congratulates the search team for the discovery of HMAS *Sydney's* resting place;
- (d) notes the Coalition's strong support for efforts to find the wreck, including \$4.2 million in funding under the Howard Government;
- (e) calls on the Government to move quickly to proclaim HMAS *Sydney* an official war grave to ensure that she and her crew are protected; and
- (f) further calls on the Government to recognise the needs of the families and friends of the victims by ensuring a memorial service is held as soon as possible.

Question put and passed. All Government senators, by leave, recorded their votes for the noes. All Australian Greens senators, by leave, recorded their votes for the ayes.

**13 FREEDOM OF INFORMATION AMENDMENT (OPEN GOVERNMENT) BILL 2003 [2004]—RESTORATION TO NOTICE PAPER**

Senator Murray, at the request of Senator Bartlett and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 47—

- (1) That so much of standing orders be suspended as would prevent this resolution having effect.
- (2) That the Freedom of Information Amendment (Open Government) Bill 2003 [2004] be restored to the *Notice Paper* and that consideration of the bill resumed at the stage reached in the 41st Parliament.

Question put and passed.

**14 NATIONAL COMMISSIONER FOR CHILDREN BILL 2008**

Senator Murray, at the request of Senator Bartlett and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 26—That the following bill be introduced:

A Bill for an Act to establish an Office of National Commissioner for Children and Young People, and for related purposes.

Question put and passed.

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

Question put and passed.

Bill read a first time.

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

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

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

#### 15 ADMINISTRATION—QUEENSLAND—LOCAL GOVERNMENT ELECTIONS

Senator Boyce, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 51—That the Senate congratulates the Lord Mayor of Brisbane, Campbell Newman and the Liberal Council team on their victory in the local government elections in Queensland on Saturday, 15 March 2008.

Question put and passed.

#### 16 FOREIGN AFFAIRS—CHINA

The Leader of the Australian Greens (Senator Bob Brown) amended general business notice of motion no. 35 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate:

- (a) having regard to:
  - (i) the 11th Australia-China Human Rights Dialogue held in Beijing on 30 July 2007,
  - (ii) the United Nations (UN) Olympics Truce, as passed by the UN General Assembly on 31 October 2007 (A/RES/62/4),
  - (iii) the 49th anniversary of the Tibetan Uprising of 10 March 1959,
  - (iv) the 60th anniversary of the Universal Declaration of Human Rights, with particular attention to Article 9, concerning arbitrary arrest and detention, Article 13 on the right to freedom of movement and Article 18 on the rights to freedom of thought, conscience and religion,
  - (v) the establishment of diplomatic relations between Australia and the People's Republic of China on 21 December 1972 resulting in Australia-China relations developing strongly, politically and economically, and
  - (vi) the Australia-China Strategic Dialogue, established on 7 September 2007, which is of great importance for the relationship between Australia and China;
- (b) regrets that there have been no further rounds of the Sino-Tibetan dialogue since February 2006 and that the five rounds of talks between Chinese officials and representatives of the Dalai Lama from 2002 to 2006, led by his Special Envoy Lodi Gyari, brought no substantive results;
- (c) calls on the parties to make every effort to continue the dialogue; and



- (d) reiterates its concern over the reports of continuing human rights violations in Tibet, including torture, arbitrary arrest and detention, repression of religious freedom, 'patriotic re-education' including forcing Tibetans to denounce the Dalai Lama, arbitrary restrictions on free movement, rehabilitation through labour camps and coercive resettlement.

Question put and passed.

#### 17 ADMINISTRATION—POLITICAL PARTIES—DONATIONS

Senator Murray, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 32—That, in view of:

- (a) the instances of developers being identified in investigations into corrupt influence in local government, and other levels of government;
- (b) public and media perceptions of improper conduct and influence by developers; and
- (c) calls for donations, loans, gifts and favours from developers to be prohibited, the Senate calls on the Prime Minister (Mr Rudd) to put this matter before the Council of Australian Governments, with a view to designing amendments to all federal, state and territory electoral laws no later than 1 December 2008 either:
- (a) prohibiting donations, loans, or gifts by developers, either directly or indirectly, to candidates or political parties at any level of government; or
- (b) significantly improving and harmonising law, regulation and governance in this area.

Question put.

The Senate divided—

#### AYES, 7

Senators—

|            |          |        |                  |
|------------|----------|--------|------------------|
| Allison    | Fielding | Murray | Siewert (Teller) |
| Brown, Bob | Milne    | Nettle |                  |

#### NOES, 55

Senators—

|              |                   |                  |           |
|--------------|-------------------|------------------|-----------|
| Adams        | Cormann           | Kirk             | Payne     |
| Barnett      | Crossin           | Ludwig           | Polley    |
| Bernardi     | Ellison           | Lundy            | Ray       |
| Birmingham   | Ferguson          | Macdonald, Ian   | Ronaldson |
| Bishop       | Fierravanti-Wells | Macdonald, Sandy | Scullion  |
| Boswell      | Fifield           | Marshall         | Sherry    |
| Boyce        | Fisher            | McEwen           | Stephens  |
| Brandis      | Forshaw           | McGauran         | Troeth    |
| Brown, Carol | Hogg              | McLucas          | Trood     |
| Bushby       | Humphries         | Moore            | Watson    |
| Campbell     | Hurley            | Nash             | Webber    |
| Chapman      | Hutchins          | O'Brien          | Wong      |
| Colbeck      | Johnston          | Parry (Teller)   | Wortley   |
| Coonan       | Kemp              | Patterson        |           |

Question negatived.

**18 ENVIRONMENT—TASMANIA—TARKINE WILDERNESS**

Senator Milne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 54—That the Senate—

(a) notes:

- (i) a bushfire in the magnificent Tarkine wilderness area in north west Tasmania had burnt 1 800 hectares by 17 March 2008,
- (ii) that the fire was started in conjunction with a car accident on the ‘Road to Nowhere’ known as the Western Explorer Road, and
- (iii) the high risk of fire from opening the inaccessible area to vehicle access was identified by conservationists as a major threat and reason for objection when the road was proposed and approved by the Tasmanian Liberal Government in 1994; and

(b) calls on the Government to:

- (i) urge the Tasmanian Government to close the road and convert it to a world-class cycling and walking track, and
- (ii) advance the world heritage nomination of the area to secure its permanent protection.

Question put.

The Senate divided—

AYES, 5

Senators—

|            |       |        |                  |
|------------|-------|--------|------------------|
| Allison    | Milne | Nettle | Siewert (Teller) |
| Brown, Bob |       |        |                  |

NOES, 57

Senators—

|              |                   |                  |           |
|--------------|-------------------|------------------|-----------|
| Adams        | Crossin           | Kirk             | Polley    |
| Barnett      | Eggleston         | Ludwig           | Ray       |
| Bernardi     | Ellison           | Lundy            | Ronaldson |
| Birmingham   | Ferguson          | Macdonald, Ian   | Scullion  |
| Bishop       | Fielding          | Macdonald, Sandy | Sherry    |
| Boswell      | Fierravanti-Wells | Marshall         | Stephens  |
| Boyce        | Fifield           | McEwen           | Troeth    |
| Brandis      | Fisher            | McGauran         | Trood     |
| Brown, Carol | Forshaw           | McLucas          | Watson    |
| Bushby       | Hogg              | Moore            | Webber    |
| Campbell     | Humphries         | Nash             | Wong      |
| Chapman      | Hurley            | O’Brien          | Wortley   |
| Colbeck      | Hutchins          | Parry (Teller)   |           |
| Coonan       | Johnston          | Patterson        |           |
| Cormann      | Kemp              | Payne            |           |

Question negatived.

**19 DEATH OF PROFESSOR PETER CULLEN**

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 52—That the Senate—

(a) notes with deep regret the passing of Professor Peter Cullen on 13 March 2008;

- (b) acknowledges the significant contribution Professor Cullen made:
  - (i) to the environment, natural resource policy, freshwater ecology, and the management of Australia's water resources, particularly within the Murray Darling Basin, and
  - (ii) to the knowledge and understanding of these complex and vital issues, including his significant role in the development of sustainable water policy in Australia, and that his insightful analysis will be sorely missed;
- (c) acknowledges that Professor Cullen was particularly skilled at bridging the gap between science and the policy and practice of water management, and had a flair for using language that made complex issues accessible and got the point across; for example, some 'Cullen-isms' include:
  - (i) on the importance of water accounting, 'Flying blind hasn't worked and we must know how much water we have, where it is and how it is being used. We need to know the health of our waterways',
  - (ii) on managing water scarcity, 'Believing we could meet the water needs of these communities by fixing a few leaking taps and having shorter showers was always a fantasy',
  - (iii) on the Murray Darling, 'We don't have all the answers—nobody does—but before we start laying bricks and mortar, we have got to get the foundations right, otherwise the cathedral will tumble with the smallest of tremors', and
  - (iv) on climate change, 'We're doing a wonderful experiment in global warming at the moment but by the time it gets through peer review there might not be many humans left on the planet'; and
- (d) offers its condolences to his family and friends.

Question put and passed.

## 20 GLOBAL MARKET TURBULENCE AND THE AUSTRALIAN ECONOMY—MINISTERIAL STATEMENT—DOCUMENT

The Minister for Human Services (Senator Ludwig) tabled the following document:

Global market turbulence and the Australian economy—Ministerial statement by the Treasurer (Mr Swan), dated 18 March 2008.

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

Question put and passed.

## 21 COMMITTEES—REPORTS—ADDITIONAL ESTIMATES 2007-08

Pursuant to order, Senator Carol Brown, at the request of the chairs of the respective committees, tabled the following reports, dated March 2008, and documents:

Additional estimates 2007-08—

Community Affairs—Standing Committee—Report and Hansard record of proceedings.

Economics—Standing Committee—Report, Hansard record of proceedings, documents presented to the committee and additional information.

Education, Employment and Workplace Relations—Standing Committee—Report, Hansard record of proceedings and documents presented to the committee.

Environment, Communications and the Arts—Standing Committee—Report, Hansard record of proceedings and documents presented to the committee.

Finance and Public Administration—Standing Committee—Report, Hansard record of proceedings, documents presented to the committee and additional information.

Foreign Affairs, Defence and Trade—Standing Committee—Report and Hansard record of proceedings.

Legal and Constitutional Affairs—Standing Committee—Report, Hansard record of proceedings, documents presented to the committee and additional information.

Rural and Regional Affairs and Transport—Standing Committee—Report, Hansard record of proceedings and documents presented to the committee.

Reports ordered to be printed on the motion of Senator Carol Brown.

## 22 DOCUMENTS

The following documents were tabled by the Clerk:

*[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]*

*Appropriation Act (No. 1) 2006-2007—Determination to reduce appropriation upon request—No. 4 of 2007-2008 [F2008L00742]\*.*

Census and Statistics Act—Statement No. 1 of 2008—Lists of Agricultural Farm Businesses for the Australian Bureau of Agricultural and Resource Economics.

Civil Aviation Act—Civil Aviation Safety Regulations—

Airworthiness Directives—Part—

105—

AD/BEECH 23/38—Control Column Bearing Assemblies [F2008L00749]\*.

AD/BEECH 33/1—Vertical Stabiliser Trailing Edge Skin [F2008L00748]\*.

AD/BEECH 33/15 Amdt 1—Second Row Seats [F2008L00747]\*.

AD/BEECH 33/21 Amdt 1—Hatshelf Soundproofing Blanket [F2008L00746]\*.

AD/BEECH 33/26—Front Seat Restraint Installation [F2008L00745]\*.

AD/BEECH 200/31 Amdt 1—Elevator Control Horn Attachment [F2008L00753]\*.

107—AD/FSM/31—Precision Airmotive Fuel Injection Servo Plugs [F2008L00795]\*.

Instrument No. CASA EX20/08—Exemption – from Airworthiness Directive to permit repositioning [F2008L00817]\*.

Corporations Act—Accounting Standard AASB 2008-1—Amendments to Australian Accounting Standard – Share-based Payments: Vesting Conditions and Cancellations [F2008L00714]\*.

Financial Sector (Collection of Data) Act—Explanatory statement and Financial Sector (Collection of Data) (Reporting Standard) Determinations Nos—

37 of 2008—Reporting standard ARS 320.9 Intra-Group Receivables and Payables [F2008L00462].

39 of 2008—Reporting standard ARS 322.0 Statement of Financial Position (Consolidated) [F2008L00467].

41 of 2008—Reporting standard ARS 325.0 International Operations [F2008L00473].

48 of 2008—Reporting standard ARS 332.0 Statement of Economic Activity [F2008L00513].

Food Standards Australia New Zealand Act—Australia New Zealand Food Standards Code – Amendment No. 97 – 2008 [F2008L00708]\*.

Private Health Insurance (Transitional Provisions and Consequential Amendments) Act—Private Health Insurance (Transition) Amendment Rules 2008 [F2008L00711]\*.

Remuneration Tribunal Act—Determination 2008/03: Remuneration and Allowances for Holders of Public Office [F2008L00794]\*.

Veterans' Entitlements Act—Veterans' Entitlements Income (Exempt Lump Sum – Exceptional Circumstances Exit Grant) Determination No. R9 of 2008 [F2008L00670]\*.

\* Explanatory statement tabled with legislative instrument.

**23 INDEXED LISTS OF DEPARTMENTAL AND AGENCY FILES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT**

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2007—Statement of compliance—Finance and Deregulation portfolio agencies.

**24 INFRASTRUCTURE AUSTRALIA BILL 2008**

A message from the House of Representatives was reported transmitting for the concurrence of the Senate the following bill:

Message no. 33, dated 17 March 2008—A Bill for an Act to establish Infrastructure Australia and the Infrastructure Coordinator, and for related purposes.

The Minister for Climate Change and Water (Senator Wong) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

On the motion of Senator Wong the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

**25 WORKPLACE RELATIONS AMENDMENT (TRANSITION TO FORWARD WITH FAIRNESS) BILL 2008**

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

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*In the committee*

Consideration resumed of the bill—and of the amendment moved by the Minister for Climate Change and Water (Senator Wong) (see entry no. 4).

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

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

Schedule 1, item 2, page 5 (line 24), after “workplace agreement is”, insert “, so far as the context permits,”.

Schedule 1, item 2, page 5 (lines 31 and 32), omit “employee’s overall terms and conditions of employment”, substitute “overall terms and conditions of employment of the employee whose employment is subject to the agreement”.

Schedule 1, item 2, page 6 (line 4), after “employment of the employees”, insert “whose employment is subject to the agreement”.

Bill, as amended, further debated.

Senator Siewert moved the following amendments together by leave:

Schedule 1, item 2, page 5 (lines 29 to 33), omit subsection 346D(1), substitute:

- (1) An ITEA passes the no-disadvantage test if the Workplace Authority Director is satisfied that:
  - (a) the ITEA does not result, or would not result, on balance, in a reduction in the employee’s overall terms and conditions of employment under any reference instrument relating to the employee; and
  - (b) the ITEA would not result, on balance, in a reduction in the employee’s overall terms and conditions of employment under any law of a State or Territory that was in existence immediately before the reform commencement that the Workplace Authority Director considers relevant; and
  - (c) the ITEA complies with the Australian Fair Pay and Conditions Standard.

Schedule 1, item 2, page 6 (lines 1 to 6), omit subsection 346D(2), substitute:

- (2) A collective agreement passes the no-disadvantage test if the Workplace Authority Director is satisfied that:
  - (a) the agreement does not result, or would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees under any reference instrument relating to one or more of the employees; and
  - (b) the agreement would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees under any law of a State or Territory that was in existence immediately before the reform commencement that the Workplace Authority Director considers relevant; and
  - (c) the agreement complies with the Australian Fair Pay and Conditions Standard.

Debate ensued.

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

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

Schedule 1, item 2, page 6 (after line 6), after subsection 346D(2), insert:

- (2A) For the purposes of subsection (1) or (2):
  - (a) a law of a State or Territory that:
    - (i) relates to long service leave; and

- (ii) immediately before the agreement was lodged, applied to an employee referred to in that subsection, or would have applied to such an employee if he or she had been employed by the employer at that time;
- is taken, to the extent that it provides for long service leave, to be a reference instrument relating to the employee; and
- (b) if, apart from this subsection, the only reference instrument relating to the employee is a designated award for the employee—the designated award is to be disregarded to the extent (if any) that it provides for long service leave.

On the motion of Senator Wong the following amendment was agreed to:

Schedule 1, item 2, page 6 (after line 27), at the end of section 346D, add:

- (8) To avoid doubt, if there is a reference instrument in relation to one or more, but not all, of the employees whose employment is subject to a collective agreement:
  - (a) in a case where the agreement passes the no-disadvantage test under subsection (2)—it passes the test in relation to all employees whose employment is subject to the agreement; or
  - (b) in a case where the agreement does not pass the no-disadvantage test under subsection (2)—it does not pass the test in relation to any employees whose employment is subject to the agreement.

Senator Siewert moved the following amendment:

Schedule 1, item 2, page 9 (after line 25), after subsection 346G(1), insert:

- (1A) An employer who makes an application under subsection (1) must provide a copy of the application to the relevant employee or employees, as the case may be, within seven days of making the application.

Debate ensued.

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

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

Schedule 1, item 2, page 10 (lines 6 to 25), omit subsection 346G(3).

Schedule 1, item 2, page 12 (lines 14 to 18), omit subsection 346H(2), substitute:

- (2) The Workplace Authority Director must determine that an award is a designated award for the employee or employees referred to in subsection (1), if the Workplace Authority Director is satisfied that:
  - (a) on the date of lodgment of the agreement or variation (as the case requires), the employee or employees are or would be employed in an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employee or employees:
    - (i) are usually regulated by an award; or
    - (ii) would, but for a workplace agreement or another industrial instrument having come into operation, usually be regulated by an award; and
  - (b) there is an award that satisfies the requirements specified in subsection (3).

Schedule 1, item 2, page 12 (after line 37), after section 346H, insert:

**346HA Effect of State awards etc.**

For the purposes of paragraphs 346G(2)(a) and 346H(2)(a), an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by an employee are usually regulated by an award is taken to include an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employee:

- (a) were, immediately before the reform commencement, usually regulated by a State award, or would, but for an industrial instrument or a State employment agreement having come into operation, usually have been so regulated immediately before the reform commencement; or
- (b) are usually regulated by any of the following instruments:
  - (i) a transitional Victorian reference award (within the meaning of Part 7 of Schedule 6);
  - (ii) a common rule in operation under Schedule 6;
  - (iii) a transitional award (within the meaning of Schedule 6) other than a Victorian reference award (within the meaning of that Schedule), to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria;
    - or would, but for a workplace agreement or an industrial instrument having come into operation, usually be so regulated.

Senator Siewert moved the following amendments together by leave:

Schedule 1, item 2, page 13 (line 31), omit “**that**”, substitute “**to**”.

Schedule 1, item 2, page 13 (line 34) to page 14 (line 5), omit subsection 346K(1), substitute:

- (1) This Subdivision applies to all workplace agreements.

Schedule 1, item 2, page 14 (line 9), omit “to which this Subdivision applies”.

Schedule 1, item 2, page 14 (after line 28), at the end of paragraph 346M(1)(a), add:

- (iv) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement;

Schedule 1, item 2, page 15 (after line 9), at the end of paragraph 346M(2)(a), add:

- (iv) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement;

Schedule 1, item 2, page 17 (line 4), at the end of subsection 346Q(2), add:

- ; (d) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement.

Debate ensued.

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



Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 2, Subdivisions D and E.

Schedule 1, item 2, Subdivisions D and E agreed to.

Senator Siewert moved the following amendments together by leave:

Schedule 1, item 2, page 15 (after line 25), after section 346M, insert:

**346MA Workplace Authority Director must provide written reasons**

- (1) If the Workplace Authority Director makes a decision under section 346D that an agreement:
- (a) passes the no-disadvantage test; or
  - (b) does not pass the no-disadvantage test;
- then, in response to a request by any of the following parties:
- (c) the employer in relation to the agreement;
  - (d) an employee whose employment is subject to the agreement;
  - (e) if the agreement is a union collective agreement or a multiple-business agreement that would be a union collective agreement but for subsection 331(1)—the organisation or organisations bound by the agreement;
  - (f) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement;

the Workplace Authority Director must provide written reasons for the decision.

Schedule 1, item 2, page 15 (after line 25), after section 346M, insert:

**346MB Review of decisions of Workplace Authority Director**

If the Workplace Authority Director makes a decision under section 346D in relation to an agreement, any of the parties to the agreement in paragraphs 346MA(c) to (f) may appeal to the Federal Magistrates Court for a review of the decision in accordance with the *Administrative Decisions (Judicial Review) Act 1977*.

Debate ensued.

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

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

Schedule 1, item 2, page 15 (lines 31 to 34), omit subsection 346N(2), substitute:

- (2) For the purposes of subsection (1), Division 8 does not apply to the variation of an agreement, except for sections 367, 368, 368A, 372, 373 and 374, paragraph 377(1)(b) and section 380A.

Schedule 1, item 2, page 20 (lines 27 to 30), omit subsection 346W(5), substitute:

- (5) For the purposes of paragraph (2)(a), Division 8 does not apply to the variation of an agreement, except for sections 367, 368, 368A, 372, 373 and 374, paragraph 377(1)(b) and section 380A.

On the motion of Senator Wong the following amendment was agreed to:

Schedule 1, item 2, page 30 (line 23), after “section 346M,” insert “346Q.”

Senator Siewert moved the following amendments together by leave:

- Schedule 1, item 2, page 31 (line 1), after paragraph 346ZJ(1)(b), add:  
 or (c) fail to employ an employee; or  
 (d) treat an employee any less favourably;

Schedule 1, item 2, page 31 (lines 2 and 3), omit “the sole or dominant reason for the employer dismissing, or threatening to dismiss,” substitute “one of the reasons for the employer dismissing, threatening to dismiss, failing to employ or treating less favourably.”.

Debate ensued.

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

Senator Siewert moved the following amendment:

Schedule 1, page 34 (after line 9), after item 7, insert:

**7A At the end of section 352**

Add:

*AWAs and ITEAs to expire on nominal expiry date*

- (3) Notwithstanding any other provision of this Act, a pre-reform AWA, an AWA or an ITEA expires on its nominal expiry date and ceases to have effect on that date.

Debate ensued.

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

On the motion of Senator Wong the following amendment was agreed to:

Schedule 1, item 15, page 39 (line 10), omit paragraph 2(2)(b).

Senator Siewert moved the following amendment:

Schedule 1, item 15, page 39 (after line 28), after clause 2, insert:

**2A Application of no-disadvantage test to AWAs**

- (1) An employee employed under an AWA or the bargaining agent of an employee employed under an AWA may apply to the Workplace Authority Director for a review of the employee’s AWA to determine whether it passes the no-disadvantage test in Division 5A.
- (2) If the Workplace Authority Director determines that the AWA fails the no-disadvantage test, the employee may terminate the AWA by lodging with the Workplace Authority Director a declaration of termination which meets the requirements set out in subsection 395(3).
- (3) The employee must take reasonable steps to ensure that written notice of the termination is given to the employer in relation to the AWA.
- (4) An employer must not:
  - (a) dismiss an employee; or
  - (b) threaten to dismiss an employee; or
  - (c) treat an employee any less favourably;
 if one of the reasons for the employer dismissing, threatening to dismiss or treating less favourably, the employee is that the employee sought a review of his or her AWA or that the employee terminated his or her AWA.
- (5) Subsection (4) is a civil remedy provision.

Note 1: A contravention of subsection (4) is enforceable by a workplace inspector—see Division 11 for provisions on enforcement.

Note 2: Division 3 of Part 14 contains other provisions relevant to civil remedies.

Debate ensued.

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

On the motion of Senator Wong the following amendment was agreed to:

Schedule 1, item 15, page 40 (after line 3), after subclause 3(1), insert:

- (1A) However, paragraph 405(1)(e) of the pre-transition Act continues to apply in relation to a person whose appointment has ceased to have effect under subclause (1), as if the person continues to be a bargaining agent.

Senator Siewert moved the following amendment:

Schedule 1, item 15, page 40 (line 34) to page 41 (line 6), omit subclause 5(3).

Debate ensued.

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

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

Schedule 1, item 15, page 41 (line 24), omit “the 14 day period referred to in section 342”, substitute “a period of 14 days after the commencement of this Schedule”.

Schedule 1, item 15, page 41 (lines 33 and 34), omit “the 14 day period referred to in section 375”, substitute “a period of 14 days after the commencement of this Schedule”.

On the motion of Senator Wong the following amendment was agreed to:

Schedule 1, item 15, page 42 (after line 13), after paragraph 8(1)(a), insert:

- (aa) paragraph 336(b);

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

Schedule 1, item 15, page 43 (after line 20), after paragraph 2(1)(c), insert:

- (ca) subsections 347(1) and (2);

On the motion of Senator Wong the following amendment was agreed to:

Schedule 1, Part 2, page 44 (after line 15), at the end of the Part, add:

**15A Effect of repeal of section 399**

- (1) To avoid doubt, if, immediately before the commencement of this item, an industrial instrument had no effect because of the operation of section 399 of the pre-transition Act, the repeal of that section by this Act:

- (a) does not cause the instrument to have effect after that commencement; and  
 (b) does not cause any protected award condition to cease to have effect.

- (2) In this item:

*industrial instrument* means an instrument mentioned in subsection 399(3) of the pre-transition Act, and includes any of the following (except to the extent that they contain protected award conditions):

- (a) a common rule within the meaning of clause 89 of Schedule 6;

- (b) a transitional Victorian reference award within the meaning of Part 7 of that Schedule;
- (c) a transitional award within the meaning of that Schedule, to the extent that subclause 102(1) of that Schedule applies to it.

*pre-transition Act* means the *Workplace Relations Act 1996* as in force immediately before the commencement of this item.

*protected award condition* has the meaning it had for the purposes of section 354 of the pre-transition Act.

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

Schedule 1, item 48, page 50 (line 22), omit “section 346W (which deals”, substitute “section 346N or 346W (which deal”.

Schedule 1, item 67, page 53 (line 33) to page 54 (line 1), omit the item, substitute:

**67 Paragraphs 390(2)(b) and 392(2)(ba) and (c)**

Omit “AWA”, substitute “ITEA”.

Senator Murray moved the following amendments together by leave:

Schedule 1, page 68 (after line 1), after item 132, insert:

**132A Subsection 643(10)**

Repeal the subsection.

Schedule 1, page 68 (after line 1), after item 132, insert:

**132B Paragraph 645(5)(c)**

Repeal the paragraph.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 1, page 68 (after line 1), after item 132, insert:

**132A Subsection 643(10)**

Omit “100 employees”, substitute “15 employees”.

Schedule 1, page 68 (after line 1), after item 132, insert:

**132B Paragraph 645(5)(c)**

Omit “100 employees”, substitute “15 employees”.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 1, page 68 (after line 1), after item 132, insert:

**132A Subsection 643(10)**

Omit “100 employees”, substitute “20 employees”.

Schedule 1, page 68 (after line 1), after item 132, insert:

**132B Paragraph 645(5)(c)**

Omit “100 employees”, substitute “20 employees”.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 8

Senators—

|                   |            |        |         |
|-------------------|------------|--------|---------|
| Allison           | Brown, Bob | Milne  | Nettle  |
| Bartlett (Teller) | Fielding   | Murray | Siewert |

NOES, 49

Senators—

|              |                   |                  |           |
|--------------|-------------------|------------------|-----------|
| Abetz        | Ferguson          | Macdonald, Sandy | Ray       |
| Adams        | Fierravanti-Wells | Marshall         | Ronaldson |
| Bernardi     | Fifield           | Mason            | Scullion  |
| Birmingham   | Fisher            | McEwen           | Stephens  |
| Bishop       | Forshaw           | McGauran         | Sterle    |
| Boswell      | Heffernan         | Minchin          | Troeth    |
| Brandis      | Hogg              | Moore            | Watson    |
| Brown, Carol | Humphries         | Nash             | Webber    |
| Chapman      | Hurley            | O'Brien (Teller) | Wong      |
| Colbeck      | Hutchins          | Parry            | Wortley   |
| Cormann      | Kemp              | Patterson        |           |
| Crossin      | Kirk              | Payne            |           |
| Eggleston    | Lundy             | Polley           |           |

Question negatived.

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

Schedule 1, item 159, page 71 (lines 1 to 3), omit the item, substitute:

**159 At the end of subclause 89(1) of Schedule 6**

Add:

; and (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and

(d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.

Schedule 1, item 165, page 71 (lines 19 to 21), omit the item, substitute:

**165 At the end of subclause 95(1) of Schedule 6**

Add:

; and (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and

(d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.

Schedule 1, item 171, page 72 (lines 9 to 11), omit the item, substitute:

**171 At the end of subclause 102(1) of Schedule 6**

Add:

; and (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and

(d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.

On the motion of Senator Wong the following amendment was agreed to:

Schedule 1, page 74 (after line 15), after item 191, insert:

**191A After paragraph 20(a) of Schedule 7**

Insert:

- (aa) section 327;
- (ab) paragraph 336(b);
- (ac) paragraph 340(2)(a);
- (ad) paragraph 367(1)(b);
- (ae) subparagraph 369(b)(ii);
- (af) subparagraph 373(2)(a)(ii);
- (ag) subparagraph 467(1)(a)(iii);
- (ah) subparagraph 467(1)(b)(ii);

On the motion of Senator Wong the following amendment was agreed to:

Schedule 1, page 76 (after line 21), after item 210, insert:

**210A After subclause 15G(1) of Schedule 8**

Insert:

- (1A) If, after the commencement of this subclause, a preserved individual State agreement ceases to operate in relation to an employee because of subclause (1):
  - (a) any preserved collective State agreement binding the employer; or
  - (b) if there is no such preserved collective State agreement—any notional agreement preserving State awards that would have been taken to come into operation in relation to the employer and employee on the reform commencement but for the preserved individual State agreement;
 has effect in relation to the employer and employee.
- (1B) If, after the commencement of this subclause, a preserved collective State agreement ceases to operate in relation to an employee because of subclause (1), any notional agreement preserving State awards that would have been taken to come into operation in relation to the employer and employee on the reform commencement but for the preserved collective State agreement has effect in relation to the employer and employee.
- (1C) However, subsection (1A) or (1B) ceases to apply if an award or a workplace agreement comes into operation in relation to the employer and employee.

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

Schedule 1, page 78 (after line 23), after item 228, insert:

**228A Subclause 26(1) of Schedule 8**

Omit “workplace agreement” (first occurring), substitute “pre-transition workplace agreement”.

**228B Subclause 26(1) of Schedule 8**

After “section 355”, insert “of the pre-transition Act”.

**228C At the end of subclause 26(1) of Schedule 8**

Add “for the purposes of that Act”.

**228D Subclause 26(2) of Schedule 8**

After “subsection 355(6)”, insert “of the pre-transition Act”.

**228E Subclause 26(2) of Schedule 8**

Omit “workplace agreement”, substitute “pre-transition workplace agreement”.

Schedule 1, page 79 (after line 28), after item 237, insert:

**237A Subclause 52A(1) of Schedule 8**

Omit “workplace agreement” (first occurring), substitute “pre-transition workplace agreement”.

**237B Subclause 52A(1) of Schedule 8**

After “section 355”, insert “of the pre-transition Act”.

**237C At the end of subclause 52A(1) of Schedule 8**

Add “for the purposes of that Act”.

**237D Subclause 52A(2) of Schedule 8**

After “subsection 355(6)”, insert “of the pre-transition Act”.

**237E Subclause 52A(2) of Schedule 8**

Omit “workplace agreement”, substitute “pre-transition workplace agreement”.

Senator Siewert moved the following amendment:

Schedule 2, item 9, page 90 (after line 17), after paragraph 576A(2)(b), insert:

- (ba) must ensure award coverage to all employees, except those employees who, because of the seniority of their role, have traditionally not been covered by an award; and

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Schedule 2, item 9, page 90 (line 26), at the end of subsection 576A(2), add:  
; and (f) must ensure equal pay for work of equal value.

Schedule 2, item 9, page 91 (after line 24), after paragraph 576B(2)(h), insert:

- (ha) the need for rates of pay and classifications to provide equal pay for work of equal value;

Debate ensued.

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

Senator Siewert moved the following amendment:

Schedule 2, item 9, page 91 (after line 6), after paragraph 576B(2)(a), insert:

- (aa) the need to ensure all employees are covered by modern awards, except those employees who, because of the seniority of their role, have traditionally not been covered by an award;

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

Senator Siewert moved the following amendment:

Schedule 2, item 9, page 90 (line 26), at the end of subsection 576A(2), add:  
; and (g) must be regularly reviewed to ensure that they remain relevant to the rapidly changing structures of work and the labour market.

Debate ensued.

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

Senator Siewert moved the following amendment:

Schedule 2, item 9, page 96 (line 8), at the end of subsection 576J(1), add:  
; (k) exceptional matters where the circumstances of the industry or sector warrant such matters being included in the award.

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

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

Schedule 1, page 33 (after line 8), after item 4, insert:

**4A Section 349**

Before “An award”, insert “(1)”.

**4B At the end of section 349**

Add:

- (2) Despite subsection (1), if:
- (a) a person’s employment is subject to a workplace agreement; and
  - (b) but for the workplace agreement, an award would have effect in relation to the person’s employment;

the terms of the award have effect to the extent that they are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

- (3) In this section:

*outworker* means an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer.

*outworker conditions* means conditions (other than pay) for outworkers, but only to the extent necessary to ensure that their overall conditions of employment are fair and reasonable in comparison with the conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer’s business or commercial premises.

Schedule 2, item 9, page 96 (lines 23 to 30), omit section 576K, substitute:

**576K Terms providing for outworkers**

- (1) In this section:

*outworker* means:

- (a) an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer; or



- (b) an individual who is a party to a contract for services, and who, for the purposes of the contract, performs work:
  - (i) in the textile, clothing or footwear industry; and
  - (ii) at private residential premises or at other premises that are not business or commercial premises of the other party to the contract or (if there are 2 or more other parties to the contract) of any of the other parties to the contract.
- (2) A modern award may include either or both of the following:
  - (a) terms relating to the conditions under which an employer may employ employees who are outworkers (including terms relating to the pay or conditions of the outworkers);
  - (b) terms relating to the conditions under which an eligible entity (within the meaning of Division 4) may arrange for work to be carried out for the entity (either directly or indirectly) by outworkers (including terms relating to the pay or conditions of the outworkers).

Note: In paragraph (2)(a), *employee* and *employer* have the meanings given by subsections 5(1) and 6(1).

Schedule 2, page 104 (after line 22), after item 9, insert:

**9A After paragraph 2(2)(s) of Schedule 2**

Insert:

(sa) subsection 576K(1), definition of *outworker*;

**9B At the end of subclause 3(2) of Schedule 2**

Add:

; (j) subsection 576K(1), definition of *outworker*.

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

Schedule 1, item 2, page 11 (lines 1 to 3), omit paragraph 346G(4)(c), substitute:

- (c) must not be an award that regulates the terms and conditions of employment in a single business only (being the single business specified in the award).

Schedule 1, item 2, page 12 (lines 31 to 33), omit paragraph 346H(3)(c), substitute:

- (c) must not be an award that regulates the terms and conditions of employment in a single business only (being the single business specified in the award).

Schedule 2, item 9, page 100 (lines 17 to 19), omit the definition of *enterprise award* in section 576U, substitute:

*enterprise award* means an award that regulates the terms and conditions of employment in a single business only (being the single business specified in the award).

Schedule 2, item 9, page 100 (line 21), omit “the matter”, substitute “a matter”.

Senator Siewert moved the following amendment:

Schedule 2, item 9, page 99 (after line 23), after subsection 576T(1), insert:

- (1A) Despite subsection (1), a modern award may include terms and conditions of employment of the kind referred to in subsection (1) if the AIRC is of the opinion that such conditions are necessary to provide a fair minimum safety net.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 3, page 108 (after line 7), after item 1, insert:

**1A After paragraph 21(a)**

Insert:

- (aa) monitor pay equity;  
 (ab) hear individual complaints of pay inequity;  
 (ac) provide simplified proceedings for the conduct of matters arising under paragraph (ab) which comply with sections 108 and 109.

Schedule 3, page 108 (after line 12), after item 2, insert:

**2A Section 23**

Repeal the section, substitute:

**23 AFPC's wage-setting parameters**

- (1) The objective of the AFPC in performing its wage-setting function is to ensure that a safety net of fair minimum wages and conditions of employment is established and maintained while promoting the economic prosperity of the people of Australia, having regard to the following:
- (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
- (b) the capacity of the unemployed and the low paid to obtain and remain in employment;
- (c) economic factors, including levels of productivity and inflation, desirability of attaining a high level of employment, employment and competitiveness across the economy;
- (d) relevant taxation and government transfer payments;
- (e) the needs of the low paid.
- (2) In performing its functions under this Part, the AFPC must have regard to the following:
- (a) the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed;
- (b) the need to support training arrangements through appropriate trainee wage provisions;

- (c) the need, using a case-by-case approach, to protect the competitive position of young people in the labour market, to promote youth employment, youth skills and community standards and to assist in reducing youth unemployment, through appropriate wage provisions, including where appropriate junior wage provisions, taking into account:
    - (i) the extent of labour market disadvantage faced by young workers; and
    - (ii) the work value of young workers at different ages; and
    - (iii) the promotion of skills development and training of young workers to reduce their labour market disadvantages; and
    - (iv) the desirability of minimising discrimination on the basis of age in wage rates only to the extent necessary to further these objectives; and
    - (v) the structural efficiency principle; and
    - (vi) that 18 years of age is considered an adult;
  - (d) the need to provide a supported wage system for people with disabilities;
  - (e) the need to apply the principle of equal pay for work of equal value;
  - (f) the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (3) For the purposes of paragraph (2)(f), trainee wage arrangements are not to be treated as constituting discrimination by reason of age if:
- (a) they apply (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or
  - (b) they contain different rates of pay for adult and non-adult employees participating in an apprenticeship, cadetship or other similar work-based training arrangement.

Schedule 3, page 108 (after line 12), after item 2, insert:

**2E After paragraph 150B(1)(h)**

Insert:

- (ha) investigate, research and regularly publish pay equity outcomes for all ITEAs and collective agreements;

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 3, page 108 (after line 7), after item 1, insert:

**1B Paragraph 22(1)(a)**

After “conduct”, insert “annual”.

Schedule 3, page 108 (after line 12), after item 2, insert:

**2B Paragraph 24(1)(a)**

Before “the” insert, “subject to paragraph 22(1)(a),”.

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

Senator Murray moved the following amendment:

Schedule 3, page 108 (after line 12), after item 2, insert:

**2C Paragraphs 103(1)(b) and 103(2)(b)**

After “economy” (second occurring), insert “and society”.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 3, page 108 (after line 12), after item 2, insert:

**2D At the end of section 104**

Add:

- (2) In taking into account matters required by subsection (1), the Commission must conduct periodic gender pay audits and work value tests before setting the FMW.

Schedule 3, page 108 (after line 12), after item 2, insert:

**2F At the end of subsection 150B(2)**

Add:

- ; and (c) the principle that men and women should receive equal remuneration for work of equal value.

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

Senator Murray moved the following amendment:

Schedule 3, page 109 (after line 4), after item 7, insert:

**7A After Subdivision A of Division 2 of Part 7**

Insert:

**Subdivision AA—Indexation of minimum wage**

**181A Indexation of minimum wage**

- (1) This Subdivision provides for the indexation of the minimum wage, in line with the Consumer Price Index, to start on commencement of this section.
- (2) The indexation factor is to be worked out in accordance with section 1193 of the *Social Security Act 1991*.
- (3) The rounding of indexed amounts is to be worked out in accordance with section 1194 of the *Social Security Act 1991*.

Debate ensued.

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

Senator Murray moved the following amendment:

Schedule 3, page 113 (after line 20), after item 40, insert:

**40B Subsection 337(4)**

Repeal the subsection, substitute:

- (4) The information statement mentioned in subsection (2) and paragraph (3)(a) must contain:
- (a) information about the time at which and the manner in which the approval will be sought under section 340; and
  - (b) if the agreement is an ITEA—information about the effect of section 334 (which deals with bargaining agents); and
  - (c) if the agreement is an employee collective agreement—information about the effect of section 335 (which deals with bargaining agents); and
  - (d) must be appropriate, having regard to the person’s particular circumstances and needs, especially if the employee(s) whose employment will be covered by the agreement are women, persons from a non-English speaking background or young persons; and
  - (e) any other information that the Employment Advocate requires by notice published in the *Gazette*.

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*Document:* Senator Murray, by leave, tabled the following document:

Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008—Minimum wages—Answer to question.

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

On the motion of Senator Wong the following amendment was agreed to:

Schedule 5, item 6, page 119 (line 18), omit “termination”, substitute “agreement”.

On the motion of Senator Wong the following amendment was agreed to:

Page 119 (after line 19), after Schedule 5, insert:

**Schedule 5A—Transitional treatment of State employment agreements**

***Workplace Relations Act 1996***

**1 After clause 16 of Schedule 8**

Insert:

**16A Commission may extend or vary preserved collective State agreements**

- (1) The Commission may, on application by any person bound by a preserved collective State agreement, by order:
  - (a) extend the nominal expiry date of the agreement; or
  - (b) vary the terms of the agreement.
- (2) However, before making the order, the Commission must be satisfied that:

- (a) all parties bound by the agreement genuinely agree to the extension or variation; and
  - (b) none of the parties have, after the introduction day:
    - (i) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
    - (ii) applied for a protected action ballot under section 451 in relation to proposed industrial action; and
  - (c) in the case of a variation—the agreement as varied would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees bound by the agreement under:
    - (i) any relevant State award in relation to the employees; and
    - (ii) any law of the Commonwealth, or of a State or Territory, that the Commission considers relevant.
- (3) If the Commission extends the nominal expiry date of the agreement, the extended date cannot be more than 3 years after the date on which the order is made.
- (4) The employees bound by the agreement are taken, for the purposes of paragraph (2)(a), genuinely to agree to the extension or variation if:
- (a) the employer gives all of the employees bound by the agreement at the time of making the extension or variation a reasonable opportunity genuinely to decide whether they agree to the extension or variation; and
  - (b) either:
    - (i) if the decision is made by a vote—a majority of those employees who cast a valid vote; or
    - (ii) otherwise—a majority of those employees; genuinely decide that they agree to the extension or variation.
- (5) To avoid doubt, the terms and conditions of employment under a relevant State award may, for the purposes of paragraph (2)(c), include terms and conditions that did not apply on the reform commencement, or that have been varied since the reform commencement.
- (6) In this clause:

**introduction day** means the day on which the Bill that became the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* was introduced into the House of Representatives.

**relevant State award**, in relation to an employee, means:

- (a) if, immediately before the reform commencement, the employee was bound by, or a party to, the original collective agreement to which the preserved collective State agreement referred to in subsection (1) relates, under the terms of that agreement or a State or Territory industrial law as in force at that time—the State award that would have bound the employee at that time but for that agreement; or

- (b) otherwise—the State award that would have bound, or but for the application of a State employment agreement would have bound, the employee at that time if the employee had been employed by the employer at that time.

**2 After clause 21E of Schedule 8**

Insert:

**Division 5A—Coercion**

**3 After subclause 22(1) of Schedule 8**

Insert:

(1A) A person must not:

- (a) take or threaten to take any industrial action or other action; or
- (b) refrain or threaten to refrain from taking any action;

with intent to coerce another person to agree, or not to agree, to the extension of the nominal expiry date of, or the variation of, a preserved collective State agreement under clause 16A.

Note: The heading to clause 22 of Schedule 8 is altered by adding at the end “etc.”.

**4 Subclause 22(2) of Schedule 8**

Omit “Subclause (1)”, substitute “This clause”.

**5 Subclause 22(3) of Schedule 8**

Omit “subclause (1)”, substitute “this clause”.

Senator Siewert moved the following amendments together by leave:

Page 121 (after line 11), at the end of the bill, add:

**Schedule 8—Repeal of provisions relating to prohibited content**

***Workplace Relations Act 1996***

**1 Section 321 (definition of *prohibited content*)**

Repeal the definition.

**2 Subdivision B of Division 7 of Part 8**

Repeal the Subdivision.

**3 Paragraph 367(2)(b)**

Repeal the paragraph.

**4 Section 436**

Repeal the section.

**5 Subsection 453(4)**

Repeal the subsection.

**6 Subsection 504(4)**

Repeal the subsection.

Schedule 1, item 15, page 40 (line 2), omit “(b),”.

Schedule 1, item 15, page 40 (line 10), omit “(b),”.

Schedule 1, item 15, page 42 (line 5), omit “(b),”.

Schedule 1, item 46, page 50 (line15), omit “**Paragraphs 360(2)(b) and**”, substitute “**Paragraph**”.

Debate ensued.

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

Senator Siewert moved the following amendment:

Page 121 (after line 11), at the end of the bill, add:

**Schedule 9—Repeal of certain provisions relating to unfair dismissal**

*Workplace Relations Act 1996*

**1 Section 578 (definition of operational reasons)**

Repeal the definition.

**2 Paragraph 581(2)(b)**

Repeal the paragraph.

**3 Subsection 643(1)**

Omit “subsections (5), (6), (8) and (10)”, substitute “subsections (5) and (6)”.

**4 Subsections 643(8) and (9)**

Repeal the subsections.

**5 Subsections 643(10) to (12)**

Repeal the subsections.

**6 At the end of paragraph 645(5)(b)**

Omit “or”.

**7 Paragraph 645(5)(c)**

Repeal the paragraph.

**8 Section 649**

Repeal the section.

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

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of Senator Wong the report from the committee was adopted and the bill read a third time.

**26 NOTICES**

Senator Stott Despoja gave a notice of motion as follows: To move on the next day of sitting—That the following matters be referred to the Economics Committee for inquiry and report by 23 June 2008:

- (a) Australia’s capabilities in space science, industry and education;
- (b) arguments for and against expanded Australian activity in space science, industry and education; and



- (c) realistic policy options for any expansion of Australia's space science, industry and education activity, particularly focused on areas of national need or existing world-class capability.

Senator Chapman gave a notice of motion as follows: To move on the next day of sitting—That the following matter be referred to the Economics Committee for inquiry and report no later than October 2008:

The current state of Australia's space science and industry sector, examining at options to strengthen and expand Australia's position in fields that strongly align with space science and industry, giving consideration to any national strategic coordination requirements and taking into account findings and policy options of the National Innovation System Review, with particular reference to:

- (a) Australia's capabilities in space science, industry and education, including:
  - (i) existing Australian activity of world-class standard, and
  - (ii) areas in which there is currently little or no activity but that are within the technical and intellectual capacity of the country;
- (b) arguments for and against expanded Australian activity in space science and industry, including:
  - (i) an assessment of the risks to Australia's national interest of Australia's dependence on foreign-owned and operated satellites,
  - (ii) the potential benefits that could accrue to Australia through further development of our space capability,
  - (iii) economic, social, environmental, national security and other needs that are not being met or are in danger of not being met by Australia's existing space resources or access to foreign resources,
  - (iv) impediments to strengthening and expanding space science and industry in Australia, including limiting factors relating to spatial information and global positioning systems, including but not be limited to ground infrastructures, intergovernmental arrangements, legislative arrangements and government/industry coordination, and
  - (v) the goals of any strengthening and expansion of Australia's space capability both in the private sector and across government; and
- (c) realistic policy options that facilitate effective solutions to cross-sector technological and organisational challenges, opportunity capture and development imperatives that align with national need and in consideration of existing world-class capability.

Senator Parry, by leave, gave a notice of motion as follows: To move on the next day of sitting—That Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008 be referred to the Joint Standing Committee on Electoral Matters for inquiry and report by June 2009. (*general business notice of motion no. 58*)

## 27 INFRASTRUCTURE AUSTRALIA BILL 2008

Order of the day read for the adjourned debate on the motion of the Minister for Climate Change and Water (Senator Wong)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

On the motion of the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) consideration of the bill in committee of the whole was made an order of the day for the next day of sitting.

**28 ADJOURNMENT**

The Minister for Broadband, Communications and the Digital Economy (Senator Conroy) moved—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 10.34 pm till Wednesday, 19 March 2008 at 9.30 am.

**29 ATTENDANCE**

Present, all senators except Senator Stott Despoja (on leave).

**HARRY EVANS**  
Clerk of the Senate