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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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AND

FRIDAY, 20 MARCH 2009

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## 1 MEETING OF SENATE

The Senate met at 9.30 am. The President (Senator the Honourable John Hogg) took the chair and read prayers.

## 2 NOTICES

*Notices of motion:*

The Chair of the Select Committee on Agricultural and Related Industries (Senator Heffernan): To move on the next day of sitting—That the following matter be referred to the Select Committee on Agricultural and Related Industries for inquiry and report:

The incidence and severity of bushfires across Australia, including:

- (a) the impact of bushfires on human and animal life, agricultural land, the environment, public and private assets and local communities;
- (b) factors contributing to the causes and risks of bushfires across Australia, including natural resource management policies, hazard reduction and agricultural land maintenance;
- (c) the extent and effectiveness of bushfire mitigation strategies and practices, including application of resources for agricultural land, national parks, state forests, other Crown land, open space areas adjacent to development and private property and the impact of hazard reduction strategies;
- (d) the identification of measures that can be undertaken by government, industry and the community and the effectiveness of these measures in protecting agricultural industries;
- (e) any alternative or developmental bushfire prevention and mitigation approaches which can be implemented;
- (f) the appropriateness of planning and building codes with respect to land use in bushfire prone regions;
- (g) the adequacy and funding of fire-fighting resources both paid and voluntary and the usefulness of and impact on on-farm labour; and
- (h) the role of volunteers. (*general business notice of motion no. 413*)

The Leader of the Family First Party (Senator Fielding): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Parliamentary Contributory Superannuation Act 1948* to remove excessive superannuation arrangements for federal politicians, and for related purposes. ***Parliamentary Superannuation Amendment (Removal of Excessive Super) Bill 2009.*** (*general business notice of motion no. 414*)

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Wortley): To move 15 sitting days after today—

No. 1—That ACIS Administration (Commonwealth Financial Assistance) Determination 2009, made under subsections 11(3) and (4) of the *ACIS Administration Act 1999*, be disallowed.

No. 2—That the Banking Amendment Regulations 2008 (No. 2), as contained in Select Legislative Instrument 2008 No. 280 and made under the *Banking Act 1959*, be disallowed.

No. 3—That Banking (prudential standard) determination No. 3 of 2008, made under subsections 11AF(1) and (3) of the *Banking Act 1959*, be disallowed.

No. 4—That the Family Law Amendment Regulations 2008 (No. 3), as contained in Select Legislative Instrument 2008 No. 258 and made under the *Family Law Act 1975*, be disallowed.

No. 5—That Instrument number CASA 51/09, made under regulation 208 of the Civil Aviation Regulations 1988, be disallowed.

No. 6—That the Insurance Amendment Regulations 2008 (No. 2), as contained in Select Legislative Instrument 2008 No. 281 and made under the *Insurance Act 1973*, be disallowed.

No. 7—That Social Security (Administration) (Schooling Requirement) Determination 2009 (No. 1), made under section 124C of the *Social Security (Administration) Act 1999*, be disallowed.

Senator Wortley, by leave, made a statement relating to the notices of motion.

*Intention to withdraw:* The Chairman of the Standing Committee on Regulations and Ordinances (Senator Wortley), pursuant to standing order 78, gave notice of her intention, at the giving of notices on the next day of sitting, to withdraw business of the Senate notice of motion no. 2 standing in her name for 12 sitting days after today for the disallowance of the Other Grants Guidelines (Research) 2008, made under section 238-10 of the *Higher Education Support Act 2003*.

Senator Wortley, by leave, made a statement relating to the notice of intention.

### 3 ORDER OF BUSINESS—REARRANGEMENT

Senator O'Brien, by leave and at the request of the Chair of the Legal and Constitutional Affairs Committee (Senator Crossin), moved—That business of the Senate order of the day no. 3, relating to the presentation of the report of the Legal and Constitutional Affairs Committee on the exposure draft of the Personal Property Securities Bill 2008, be postponed till a later hour.

Question put and passed.

### 4 LEGAL AND CONSTITUTIONAL AFFAIRS—STANDING COMMITTEE—WITHDRAWAL OF REFERENCE

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 business of the Senate notice of motion no. 1—That the reference to the Legal and Constitutional Affairs Committee relating to Australia's judicial system be withdrawn.

Question put and passed.

### 5 LEGAL AND CONSTITUTIONAL AFFAIRS—STANDING COMMITTEE—REFERENCES

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 business of the Senate notice of motion no. 2—That the following matter be referred to the Legal and Constitutional Affairs Committee for inquiry and report by 17 August 2009:

Access to justice, with particular reference to:

- (a) the ability of people to access legal representation;
- (b) the adequacy of legal aid;
- (c) the cost of delivering justice;

- (d) measures to reduce the length and complexity of litigation and improve efficiency;
- (e) alternative means of delivering justice;
- (f) the adequacy of funding and resource arrangements for community legal centres; and
- (g) the ability of Indigenous people to access justice.

Question put and passed.

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 business of the Senate notice of motion no. 3—That the following matter be referred to the Legal and Constitutional Affairs Committee for inquiry and report by 17 August 2009:

Australia's judicial system and the role of judges, with particular reference to:

- (a) procedures for appointment and method of termination of judges;
- (b) term of appointment of judges, including the desirability of a compulsory retirement age, and the merit of full-time, part-time or other arrangements;
- (c) jurisdictional issues, for example, the interface between the federal and state judicial system; and
- (d) the judicial complaints handling system.

Question put and passed.

#### **6 RURAL AND REGIONAL AFFAIRS AND TRANSPORT—STANDING COMMITTEE— EXTENSION OF TIME TO REPORT**

Senator O'Brien, at the request of the Chair of the Rural and Regional Affairs and Transport Committee (Senator Sterle) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 404—That the time for the presentation of the report of the Rural and Regional Affairs and Transport Committee on the import risk analysis for the importation of Cavendish bananas from the Philippines be extended to 14 May 2009.

Question put and passed.

#### **7 PARLIAMENT—ASSOCIATION OF FORMER MEMBERS OF THE PARLIAMENT OF AUSTRALIA**

Senator O'Brien, at the request of the President and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 406—That the Senate—

- (1) Recognises the Association of Former Members of the Parliament of Australia, formed in 1988, as a forum in which former Members and Senators can meet, discuss and promote parliamentary democracy.
- (2) Acknowledges the contribution made by the Association and its members to debate on public policy in Australia and the furthering of parliamentary democracy in general.
- (3) Welcomes the role of the Association in encouraging former Members and Senators to maintain their contacts, associations and friendships established during their tenure as Australia parliamentarians.
- (4) Endorses the Association's role in establishing fraternal relations with kindred organisations within Australia and internationally.

Question put and passed.

**8 FOREIGN AFFAIRS—TURKEY**

Senator Ferguson, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 402—That the Senate—

- (a) celebrates and commends the achievements of the Turkish community here in the Commonwealth of Australia that has been created as a result of this agreement in the 40 years since its implementation;
- (b) notes that once enemies on the battlefields of Gallipoli, the Commonwealth of Australia and the Republic of Turkey have established a unique relationship and bond forged in the blood of young men from both nations and that this uniqueness at the core of deep rooted relations between the two countries gained even more momentum by the unforgettable reconciliatory remarks of the Founder of the Modern Turkish Republic, Mustafa Kemal Ataturk, to the mothers of fallen Anzacs ‘...You, the mothers, who sent their sons from far away countries wipe away your tears; your sons are now lying in our bosom and are in peace. After having lost their lives on this land they have become our sons as well’;
- (c) notes the Turkish nation is now a friendly power and members of the Turkish community have now integrated into Australian society;
- (d) acknowledges the unique relationship that exists between Australia and Turkey; a bond highlighted by both nations commitment to the rights and liberties of our citizens and the pursuit of a just world, highlighted by the statement of Ataturk ‘Peace at Home, Peace in the World’;
- (e) commends the Republic of Turkey’s commitment to democracy, the rule of law and secularism; and
- (f) on this, the 40th anniversary of the Formal Agreement between The Government of the Commonwealth of Australia and the Government of The Republic of Turkey concerning the Residence and Employment of Turkish Citizens in Australia, pledges Australia’s friendship, commitment and enduring support to the people of Turkey as we celebrate this important occasion together.

Question put and passed.

**9 LAW AND JUSTICE—SAME SEX LAW REFORM**

Senator Hanson-Young, also on behalf of the Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 405—That the Senate—

- (a) notes the appreciation of the gay and lesbian community of the recent passing of the same-sex law reforms;
- (b) recognises:
  - (i) concerns raised by the gay and lesbian community that isolated and vulnerable members of the community may only become aware of these reforms after 30 March 2009 when Centrelink’s education campaign commences, and
  - (ii) that the arbitrary time frame will not allow for same-sex couples to adequately adjust to the removal of discrimination before incurring debt and penalties; and
- (c) calls on the Government to revisit the implementation of a 12-month transitional period to ensure individuals currently on a social security payment have sufficient time to readjust to the changes.

*Statement by leave:* The Minister for Human Services (Senator Ludwig), by leave, made a statement relating to the motion.

Question put.

The Senate divided—

AYES, 5

Senators—

Brown, Bob	Ludlam	Milne	Siewert (Teller)
Hanson-Young			

NOES, 46

Senators—

Abetz	Collins	Hurley	Polley
Arbib	Conroy	Hutchins	Pratt
Back	Cormann	Joyce	Ryan
Barnett	Eggleston	Ludwig	Scullion
Bernardi	Farrell	Lundy	Sherry
Bilyk	Feeney	Macdonald	Troeth
Bishop	Fielding	Marshall	Trood
Brown, Carol	Fifield	McEwen	Williams
Bushby	Forshaw	McLucas	Wortley
Cameron	Furner	Moore	Xenophon
Cash	Hogg	O'Brien	
Colbeck	Humphries	Parry (Teller)	

Question negatived.

#### 10 ENVIRONMENT—SWIFT PARROT

The Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 408—That the Senate noting the words of the Government (Minister for Human Services, Senator Ludwig) in the Senate on 17 March 2009 that, 'Under the EPBC Act the Minister for the Environment, Heritage and the Arts can do much more than prevent any deliberate actions which would increase the prospect of the swift parrot going to extinction':

- (a) calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to act, well within these powers, to prevent any deliberate action which would increase the prospect of Australia's swift parrot becoming extinct; and
- (b) calls on the Government to inform the Senate by 12 May 2009 whether the swift parrot recovery plans meet International Union for the Conservation of Nature requirements.

*Statements by leave:* The Minister for Human Services (Senator Ludwig) and Senator Bob Brown, by leave, made statements relating to the motion.

Question put.

The Senate divided—

AYES, 6

Senators—

Brown, Bob	Ludlam	Siewert (Teller)	Xenophon
Hanson-Young	Milne		

## NOES, 37

Senators—

Arbib	Collins	Hurley	Parry
Barnett	Conroy	Hutchins	Polley
Bernardi	Cormann	Ludwig	Pratt
Bilyk	Eggleston	Lundy	Ryan
Bishop	Farrell	Macdonald	Scullion
Brown, Carol	Fielding	Marshall	Trood
Bushby	Fifield	McEwen	Wortley
Cameron	Forshaw	McLucas	
Cash	Furner	Moore	
Colbeck	Hogg	O'Brien (Teller)	

Question negatived.

## 11 FOREIGN AFFAIRS—JAPAN—WHALE MEAT

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 409—That the Senate—

- (a) expresses its concern over the treatment of Junichi Sato and Toru Suzuki, two Japanese Greenpeace activists who were held without charge for 26 days and are currently on strict bail restrictions, pending a court case into their role in exposing the embezzlement of whale meat from the Japanese Government sponsored whaling program;
- (b) notes that:
  - (i) on Thursday, 19 March 2009, Greenpeace Australia is coordinating concerned Australian citizens to hold peaceful protests outside the Japanese Embassy in Canberra, to voice their concerns over the Japanese Government's handling of this trial, and
  - (ii) no charges have been laid relating to the embezzlement of whale meat by the crew of the *Nisshin Maru* whaling vessel, and that the Japanese Public Prosecutor has subsequently dropped the investigation into the involvement of the crew and whaling officials in this illegal trade; and
- (c) calls on the Australian Government:
  - (i) to press the Japanese Government to take action on the alleged embezzlement of whale meat and to ensure that international human rights treaties, of which Australia and Japan are signatories, are upheld, and
  - (ii) to request the International Whaling Commission to launch its own investigation into the embezzlement of whale meat by crew members of the Japanese whaling fleet.

Question put.

The Senate divided—

## AYES, 6

Senators—

Brown, Bob	Ludlam	Siewert (Teller)	Xenophon
Hanson-Young	Milne		

## NOES, 42

Senators—

Arbib	Collins	Hurley	Parry (Teller)
Back	Conroy	Hutchins	Polley
Barnett	Cormann	Johnston	Pratt
Bernardi	Eggleston	Ludwig	Ronaldson
Bilyk	Farrell	Lundy	Ryan
Bishop	Feeney	Macdonald	Scullion
Boyce	Fielding	Marshall	Troeth
Brown, Carol	Fifield	McEwen	Trood
Cameron	Forshaw	McLucas	Wortley
Cash	Furner	Moore	
Colbeck	Hogg	O'Brien	

Question negatived.

## 12 ENVIRONMENT—RADIOACTIVE WASTE LEGISLATION

Senator Ludlam, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 412—That the Senate—

(a) notes that:

- (i) an Environment, Communication and the Arts Committee inquiry found numerous and fundamental flaws in the *Commonwealth Radioactive Waste Management Act 2005* and recommended in December 2008 that it be repealed, and
- (ii) the committee called for replacement legislation to be introduced into the parliament in the autumn 2009 sittings that would be based on principles of rigorous consultation, voluntary consent, environmental credibility, and which utilises best practice models tested internationally; and

(b) calls on the Australian Government to:

- (i) repeal the *Commonwealth Radioactive Waste Management Act 2005* and introduce replacement legislation as outlined in Australian Labor Party (ALP) policy and subsequently recommended by the committee,
- (ii) deliver a process on radioactive waste that is scientific, transparent accountable, fair and allows access to appeal mechanisms, which is both an election promise and a stated policy position of the ALP, and
- (iii) update the Senate as to the Government's intended timetable for the introduction of the repeal and replacement legislation.

Question put.

The Senate divided—

## AYES, 6

Senators—

Brown, Bob	Ludlam	Siewert (Teller)	Xenophon
Hanson-Young	Milne		

## NOES, 42

Senators—

Arbib	Colbeck	Hogg	Parry
Back	Collins	Hurley	Polley
Barnett	Conroy	Hutchins	Pratt
Bernardi	Cormann	Kroger	Ronaldson
Bilyk	Eggleston	Ludwig	Ryan
Bishop	Farrell	Lundy	Scullion
Boyce	Feeney	Macdonald	Troeth
Brown, Carol	Fielding	Marshall	Trood
Bushby	Fifield	McEwen	Wortley
Cameron	Forshaw	Moore	
Cash	Furner	O'Brien (Teller)	

Question negatived.

**13 COMMUNITY AFFAIRS—STANDING COMMITTEE—REFERENCE**

The Minister for Human Services (Senator Ludwig), pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 4—That the following matter be referred to the Community Affairs Committee for inquiry and report by 15 May 2009:

Any Government proposal to implement the Government's announced 2008-09 Budget measure to increase compliance audits on Medicare benefits by increasing the audit powers to Medicare Australia to access the patient records supporting Medicare billing and to apply sanctions on providers.

*Statement by leave:* Senator Cormann, by leave, made a statement relating to the motion.

Question put and passed.

**14 LAW AND JUSTICE—TERRORISM LAWS—INDEPENDENT REVIEWER**

Senator Ludlam amended general business notice of motion no. 410 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

(a) notes that:

- (i) more than 40 terrorism laws have been enacted in relation to terrorism since 2001, some of which included significant departures from established principles of Australian law,
- (ii) due to the exceptional nature of these complex laws, and to ensure scrutiny, accountability and transparency, an independent reviewer has been recommended by:
  - (A) the Security Legislation Review Committee chaired by the Honourable Simon Sheller AO, QC, in June 2006,
  - (B) the Parliamentary Joint Committee on Intelligence and Security in December 2006, and again in 2007,
  - (C) the Legal and Constitutional Affairs Committee in October 2008, and
  - (D) the Senate through the passage of a private senator's bill in November 2008,
- (iii) independent review mechanisms are a feature of best practice in like-minded democracies, and

- (iv) the Government's response to various reviews issued on 23 December 2008; and
- (b) calls on the Australian Government to:
  - (i) introduce legislation to establish the independent reviewer of terrorism laws mechanism announced as the National Security Legislation Monitor in the Attorney-General's press release of 23 December 2008, and
  - (ii) update the Senate as to the Government's intended timetable for the introduction of the legislation.

Question put and passed.

#### 15 POSTPONEMENT

Senator Cormann, by leave, moved—That general business notice of motion no. 407 standing in his name for today, proposing an amendment to the order of continuing effect in relation to departmental and agency appointments and vacancies, be postponed till the next day of sitting.

Question put and passed.

#### 16 COMMUNITY AFFAIRS—STANDING COMMITTEE—REFERENCE

Senator Humphries amended business of the Senate notice of motion no. 5 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the following matter be referred to the Community Affairs Committee for inquiry and report by 18 June 2009:

The design of the Federal Government's national registration and accreditation scheme for doctors and other health workers, including:

- (a) the impact of the scheme on state and territory health services;
- (b) the impact of the scheme on patient care and safety;
- (c) the effect of the scheme on standards of training and qualification of relevant health professionals;
- (d) how the scheme will affect complaints management and disciplinary processes within particular professional streams;
- (e) the appropriate role, if any, in the scheme for state and territory registration boards; and
- (f) alternative models for implementation of the scheme.

*Statement by leave:* The Minister for Human Services (Senator Ludwig), by leave, made a statement relating to the motion.

Question put and passed.

#### 17 RESERVE BANK AMENDMENT (ENHANCED INDEPENDENCE) BILL 2008— CONSIDERATION

Senator Bushby, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 403—That the Senate—

- (a) notes that:
  - (i) it has been 268 days since the House of Representatives received the Senate's message regarding amendments to the Reserve Bank Amendment (Enhanced Independence) Bill 2008;

- (ii) the Treasurer (Mr Swan) in his second reading speech to the bill said, ‘These reforms that the Governor and I agreed to last year herald in a new era of independence and transparency in monetary policy in Australia. The introduction of this bill into the parliament today is a key step to delivering this’, and
  - (iii) as a result of this inaction, the Government is failing to deliver on its ‘new era of independence and transparency’ for the Reserve Bank; and
- (b) sends a message to the House of Representatives requesting that the House immediately consider the Senate amendments to the Reserve Bank Amendment (Enhanced Independence) Bill 2008.

Question put.

The Senate divided—

AYES, 32

Senators—

Back	Cash	Heffernan	Parry (Teller)
Barnett	Colbeck	Humphries	Payne
Bernardi	Coonan	Joyce	Ronaldson
Birmingham	Cormann	Kroger	Ryan
Boswell	Eggleston	Macdonald	Scullion
Boyce	Fielding	Mason	Troeth
Brandis	Fifield	McGauran	Williams
Bushby	Fisher	Minchin	Xenophon

NOES, 31

Senators—

Arbib	Farrell	Hutchins	O’Brien (Teller)
Bilyk	Faulkner	Ludlam	Polley
Bishop	Feeney	Ludwig	Pratt
Brown, Bob	Forshaw	Lundy	Sherry
Brown, Carol	Furner	Marshall	Siewert
Cameron	Hanson-Young	McEwen	Stephens
Collins	Hogg	Milne	Wortley
Conroy	Hurley	Moore	

Question agreed to.

18 ADMINISTRATION—QUEENSLAND—STATE ELECTION—PREFERENCES

Senator Macdonald, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 411—That the Senate notes:

- (a) that the Greens political party in Queensland has allocated preferences to the Bligh Labor Government in 12 marginal seats thus heightening the chances of the Labor Government being returned to office in Queensland at the election on Saturday, 21 March 2009;
- (b) the Greens political party both in Queensland and federally claim to oppose the construction of the Traveston Crossing Dam on the Mary River in Queensland;
- (c) that the Liberal National Party in Queensland has consistently and firmly opposed the construction of the Traveston Crossing Dam;
- (d) that the Bligh Labor Government has refused to rule out construction of the Traveston Crossing Dam and has indicated it would make an application to the Federal Government for Environment Protection and Biodiversity Conservation Act approval to construct the Traveston Crossing Dam after Saturday’s election in Queensland; and

- (e) the contradictory approaches of the Greens political party to construction of the Traveston Crossing Dam.

The Leader of the Australian Greens (Senator Bob Brown), by leave, moved the following amendment:

At the end of the motion, add “and that, logically, the Queensland Liberal National Party, in concern for the Mary River, ought to prefer the Greens over the Australian Labor Party in assessing preference directions”.

*Statement by leave:* Senator Bob Brown, by leave, made a statement relating to the matter.

Senator Macdonald moved the following amendment to Senator Bob Brown’s proposed amendment:

At the end of the motion, add “and that the Senate also notes that the Liberal National Party in Queensland is not recommending preferences”.

The Leader of the Family First Party (Senator Fielding) moved the following amendment to Senator Macdonald’s proposed amendment:

At the end of the motion, add “and that the Senate notes that this is a waste of time”.

Question—That Senator Fielding’s amendment to Senator Macdonald’s proposed amendment be agreed to—put and negatived.

Question—That Senator Macdonald’s amendment to Senator Bob Brown’s proposed amendment be agreed to—put and negatived.

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

Main question, as amended, put.

The Senate divided—

#### AYES, 32

Senators—

Abetz	Cash	Heffernan	Parry
Back	Colbeck	Humphries	Payne
Barnett	Coonan	Johnston	Ronaldson
Bernardi	Cormann	Kroger	Ryan
Birmingham	Eggleston	Macdonald	Scullion
Boyce	Ferguson	Mason	Troeth
Brandis	Fifield	McGauran	Trood
Bushby	Fisher	Minchin	Williams (Teller)

#### NOES, 34

Senators—

Arbib	Farrell	Ludlam	Pratt
Bilyk	Feeney	Ludwig	Sherry
Bishop	Fielding	Lundy	Siewert
Brown, Bob	Forshaw	Marshall	Stephens
Brown, Carol	Furner	McEwen	Sterle
Cameron	Hanson-Young	Milne	Wortley
Collins	Hogg	Moore	Xenophon
Conroy	Hurley	O’Brien (Teller)	
Evans	Hutchins	Polley	

Question negatived.

**19 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION**

The Minister for Human Services (Senator Ludwig), at the request of the Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas) and pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 1—That on Thursday, 19 March 2009:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
- (b) consideration of general business, and consideration of committee reports, government responses and Auditor-General reports under standing order 62(1) and (2) shall not be proceeded with;
- (c) the routine of business from 12.45 pm till not later than 2 pm, and from not later than 3.45 pm shall be government business only;
- (d) divisions may take place after 4.30 pm;
- (e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed below and any messages from the House of Representatives:

Fair Work Bill 2008

Customs Tariff Amendment (2009 Measures No. 1) Bill 2009

Excise Tariff Amendment (2009 Measures No. 1) Bill 2009—consideration of messages

Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008

Social Security and Veterans' Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009

Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]

Appropriation Bill (No. 3) 2008-2009

Appropriation Bill (No. 4) 2008-2009

Appropriation Bill (No. 5) 2008-2009

Appropriation Bill (No. 6) 2008-2009

Tax Laws Amendment (2009 Measures No. 1) Bill 2009

Social Security Amendment (Liquid Assets Waiting Period) Bill 2009; and

- (f) if the Senate is sitting at midnight, the sitting of the Senate be suspended till 9.30 am on Friday, 20 March 2009.

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

**20 FOREIGN AFFAIRS—TURKEY—STATEMENT BY LEAVE**

Senator Xenophon, by leave, made a statement relating to a resolution agreed to earlier today concerning Turkey (*see entry no. 9*).

**21 PUBLICATIONS—STANDING COMMITTEE—9TH REPORT**

Senator O'Brien, at the request of the Chair of the Standing Committee on Publications (Senator Carol Brown), tabled the following report:

PUBLICATIONS COMMITTEE  
9TH REPORT

The Publications Committee reports that it has met in conference with the Publications Committee of the House of Representatives.

The Committee, having considered documents presented to the Parliament since 26 February 2009, recommends that the following be printed:

Australian Competition and Consumer Commission—Telstra's compliance with price control arrangements—Report for 2007-08.

*Commonwealth Electoral Act 1918*—2009 redistributions into electoral divisions—Tasmania—Report, together with composite map and disc containing supporting information.

Commonwealth Grants Commission—Report of state revenue sharing relativities—2009 update, incorporating a corrigendum.

*Housing Assistance Act 1996*—Report for 2006-07 on the operation of the 2003 Commonwealth-State Housing Agreement.

*War Crimes Act 1945*—Report for 2007-08 on the operation of the Act.

Senator Carol Brown

Chair

19 March 2009.

Senator O'Brien moved—That the report be adopted.

Question put and passed.

## 22 COMMITTEES—ADDITIONAL INFORMATION—BUDGET AND ADDITIONAL ESTIMATES 2008-09

Senator O'Brien, at the request of the chairs of the respective committees, tabled the following documents:

Budget (supplementary) 2008-09—

Economics—Standing Committee—Additional information received between 5 February and 18 March 2009—Treasury portfolio.

Education, Employment and Workplace Relations—Standing Committee—Additional information received between 4 February and 25 February 2009—Education, Employment and Workplace Relations portfolio.

Finance and Public Administration—Standing Committee—Additional information received between 11 February and 18 March 2009—Prime Minister and Cabinet portfolio.

Additional estimates 2008-09—

Community Affairs—Standing Committee—Additional information received between—

25 February and 18 March 2009—Health and Ageing portfolio.

26 February and 18 March 2009—Families, Housing, Community Services and Indigenous Affairs portfolio.

27 February and 18 March 2009—Indigenous issues across portfolio.

Finance and Public Administration—Standing Committee—Additional information received between 27 February and 18 March 2009—

Finance and Deregulation portfolio.

Parliamentary departments.

Prime Minister and Cabinet portfolio.

Legal and Constitutional Affairs—Standing Committee—Additional information received between—

23 February and 17 March 2009—Attorney-Generals' portfolio.

24 February and 17 March 2009—Immigration and Citizenship portfolio.

Senator Barnett moved—That the Senate take note of additional information received by the Legal and Constitutional Affairs Committee.

Question put and passed.

**23 FINANCE AND PUBLIC ADMINISTRATION—STANDING COMMITTEE—ADDITIONAL INFORMATION—NATIONAL BUILDING AND JOBS PLAN BILLS**

Senator O'Brien, at the request of the Chair of the Finance and Public Administration Committee (Senator Polley), tabled the following document:

Finance and Public Administration—Standing Committee—Report—Nation building and jobs plan: Inquiry into the Appropriation (Nation Building and Jobs) Bill (No. 1) 2008-2009 and 5 related bills—Additional information.

**24 TAX LAWS AMENDMENT (2009 MEASURES NO. 1) BILL 2009**

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

Message no. 292, dated 18 March 2009—A Bill for an Act to amend the law relating to taxation, and for other purposes.

The Minister for Immigration and Citizenship (Senator Evans) 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 Evans moved—That this bill be now read a second time.

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

**25 AUSCHECK AMENDMENT BILL 2009**

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

Message no. 293, dated 18 March 2009—A Bill for an Act to amend the *AusCheck Act 2007*, and for related purposes.

The Minister for Immigration and Citizenship (Senator Evans) 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 Evans moved—That this bill be now read a second time.

*Consideration of legislation:* Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

**26 COMMUNITY AFFAIRS—STANDING COMMITTEE—REPORT—PETROL SNIFFING AND SUBSTANCE ABUSE IN CENTRAL AUSTRALIA**

Pursuant to order, the Chair of the Community Affairs Committee (Senator Moore) tabled the following report and documents:

Community Affairs—Standing Committee—Grasping the opportunity of Opal: Assessing the impact of the petrol sniffing strategy—Report, dated March 2009, Hansard record of proceedings, documents presented to the committee, additional information and submissions.

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

Senator Moore, by leave, moved—That the Senate take note of the report.

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

**27 FINANCE AND PUBLIC ADMINISTRATION—STANDING COMMITTEE—REPORT—  
ANNUAL REPORTS**

Pursuant to order, Senator Farrell, at the request of the Chair of the Finance and Public Administration Committee (Senator Polley), tabled the following report:

Finance and Public Administration—Standing Committee—Annual reports referred to committees—Report no. 1 of 2009, dated March 2009.

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

**28 FAIR WORK BILL 2008**

Order of the day 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, as amended.

Bill, as amended, further debated.

On the motion of the Minister for Human Services (Senator Ludwig) the following amendments, taken together by leave, were agreed to:

Clause 27, page 45 (before line 33), before subclause (1), insert:

- (1A) Section 26 does not apply to any of the following laws:
- (a) the *Anti-Discrimination Act 1977* of New South Wales;
  - (b) the *Equal Opportunity Act 1995* of Victoria;
  - (c) the *Anti-Discrimination Act 1991* of Queensland;
  - (d) the *Equal Opportunity Act 1984* of Western Australia;
  - (e) the *Equal Opportunity Act 1984* of South Australia;
  - (f) the *Anti-Discrimination Act 1998* of Tasmania;
  - (g) the *Discrimination Act 1991* of the Australian Capital Territory;
  - (h) the *Anti-Discrimination Act* of the Northern Territory.

Clause 27, page 45 (line 34) to page 46 (line 6), omit paragraph (1)(a).

Clause 27, page 47 (lines 11 to 15), omit paragraph (2)(l), substitute:

- (l) regulation of any of the following:
- (i) employee associations;
  - (ii) employer associations;
  - (iii) members of employee associations or of employer associations;

Clause 29, page 48 (lines 5 to 13), omit subclause (2), substitute:

- (2) Despite subsection (1), a term of a modern award or enterprise agreement applies subject to the following:
- (a) any law covered by subsection 27(1A);
  - (b) any law of a State or Territory so far as it is covered by paragraph 27(1)(b), (c) or (d).

Clause 34, page 52 (line 12), at the end of paragraph (3)(a), add “and”.

Clause 34, page 52 (after line 13), after subclause (3), insert:

- (3A) For the purposes of extending this Act in accordance with subsection (3):
- (a) any reference in a provision of this Act to an employer is taken to include a reference to:
    - (i) an Australian employer; and
    - (ii) an employer of an Australian-based employee; and
  - (b) any reference in a provision of this Act to an employee is taken to include a reference to:
    - (i) an employee of an Australian employer; and
    - (ii) an Australian-based employee.

Page 53 (after line 16), after clause 35, insert:

**35A Regulations excluding application of Act**

- (1) Regulations made for the purposes of section 32 or subsection 33(4) or 34(4) may exclude the application of the whole of this Act in relation to all or a part of an area referred to in section 32 or subsection 33(4) or 34(4) (as the case may be).
- (2) If subsection (1) applies, this Act has effect as if it did not apply in relation to that area or that part of that area.

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

Clause 124, page 126 (lines 3 to 17), omit the clause, substitute:

**124 Fair Work Ombudsman to prepare and publish Fair Work Information Statement**

- (1) The Fair Work Ombudsman must prepare a *Fair Work Information Statement*. The Fair Work Ombudsman must publish the Statement in the *Gazette*.

Note: If the Fair Work Ombudsman changes the Statement, the Fair Work Ombudsman must publish the new version of the Statement in the *Gazette*.

- (2) The Statement must contain information about the following:
  - (a) the National Employment Standards;
  - (b) modern awards;
  - (c) agreement-making under this Act;
  - (d) the right to freedom of association;
  - (e) the role of FWA and the Fair Work Ombudsman;
  - (f) termination of employment;
  - (g) individual flexibility arrangements;
  - (h) right of entry (including the protection of personal information by privacy laws).
- (3) The Fair Work Information Statement is not a legislative instrument.
- (4) The regulations may prescribe other matters relating to the content or form of the Statement, or the manner in which employers may give the Statement to employees.

Clause 576, page 461 (lines 8 and 9), omit “, and undertaking activities to promote public understanding of,”.

Clause 682, page 517 (line 8), before “The”, insert “(1)”.

Clause 682, page 517 (line 10), after “harmonious”, insert “, productive”.

Clause 682, page 517 (line 13), after “organisations”, insert “and producing best practice guides to workplace relations or workplace practices”.

Clause 682, page 517 (line 31), after “Note”, insert “1”.

Clause 682, page 517 (after line 32), at the end of the clause, add:

Note 2: In performing functions under paragraph (a), the Fair Work Ombudsman might, for example, produce a best practice guide to achieving productivity through bargaining.

(2) The Fair Work Ombudsman must consult with FWA in producing guidance material that relates to the functions of FWA.

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

Clause 12, page 20 (lines 10 and 11), omit “who is also a police, stipendiary or special magistrate”.

Clause 539, page 428 (lines 17 to 19), omit “if an undertaking given by the person in relation to the contravention has not been withdrawn (see subsection 715(4))”, substitute “in certain cases where an undertaking or compliance notice has been given (see subsections 715(4) and 716(4A))”.

Clause 544, page 441 (line 15), after “Note”, insert “1”.

Clause 544, page 441 (after line 17), at the end of the clause, add:

Note 2: For time limits on orders relating to underpayments, see subsection 545(5).

Clause 545, page 442 (after line 24), at the end of the clause, add:

*Time limit for orders in relation to underpayments*

(5) A court must not make an order under this section in relation to an underpayment that relates to a period that is more than 6 years before the proceedings concerned commenced.

Clause 573, page 458 (lines 21 and 22), omit “Division 7 deals with FWA’s seal, reviews and reports, and disclosing information obtained by FWA.”, substitute “Division 7 deals with FWA’s seal. It also deals with other powers and functions of the President and the General Manager (including in relation to annual reports, reports on making enterprise agreements, arrangements with certain courts, and disclosing information obtained by FWA).”.

Page 459 (after line 2), after clause 574, insert:

#### **574A Schedule 1**

Schedule 1 has effect.

Clause 576, page 461 (line 12), after “section 650”, insert “or 653A”.

Clause 576, page 461 (after line 12), after paragraph (2)(c), insert:

(ca) mediating any proceedings, part of proceedings or matter arising out of any proceedings that, under section 53A of the *Federal Court of Australia Act 1976* or section 34 of the *Federal Magistrates Act 1999*, have been referred by the Fair Work Division of the Federal Court or Federal Magistrates Court to FWA for mediation;

Clause 596, page 470 (lines 14 and 15), omit paragraph (4)(b), substitute:

- (b) is an employee or officer of:
  - (i) an organisation; or
  - (ii) an association of employers that is not registered under the *Fair Work (Registered Organisations) Act 2009*; or
  - (iii) a peak council; or
  - (iv) a bargaining representative; that is representing the person; or

Clause 625, page 485 (after line 12), after paragraph (2)(d), insert:

- (da) publishing the results of a protected action ballot under section 457;

Clause 625, page 485 (after line 21), at the end of subclause (2), add:

- ; (i) any function or power prescribed by the regulations.

Heading to Division 7, page 501 (lines 2 and 3), omit the heading, substitute:

**Division 7—Seals and additional powers and functions of the President and the General Manager**

Heading to clause 653, page 502 (line 5), omit the heading, substitute “**Reports about making enterprise agreements, individual flexibility arrangements etc.**”.

Clause 653, page 502 (lines 6 to 11), omit subclause (1), substitute:

*Review and research*

- (1) The General Manager must:
  - (a) review the developments, in Australia, in making enterprise agreements; and
  - (b) conduct research into the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to, and the content of those arrangements; and
  - (c) conduct research into the operation of the provisions of the National Employment Standards relating to:
    - (i) requests for flexible working arrangements under subsection 65(1); and
    - (ii) requests for extensions of unpaid parental leave under subsection 76(1); and
  - (d) conduct research into:
    - (i) the circumstances in which employees make such requests; and
    - (ii) the outcome of such requests; and
    - (iii) the circumstances in which such requests are refused.
- (1A) The review and research must be conducted in relation to each of the following periods:
  - (a) the 3 year period that starts when this section commences;
  - (b) each later 3 year period.

Clause 653, page 502 (lines 12 and 13), omit “review the effects that such bargaining has had”, substitute “, in conducting the review and research, consider the effect that the matters referred to in paragraphs (1)(a) to (d) have had”.

Clause 653, page 502 (line 24), after “review”, insert “and research”.

Page 502 (after line 31), after clause 653, insert:

**653A Arrangements with the Federal Court and the Federal Magistrates Court**

The General Manager may make a written arrangement with the Federal Court or the Federal Magistrates Court for FWA to provide administrative support to the Fair Work Division of the Court.

Clause 655, page 503 (line 29), omit “under this Act”, substitute “of FWA”.

Clause 657, page 505 (after line 8), after subclause (1), insert:

- (1A) The General Manager also has the following functions:
- (a) any function conferred on him or her by a fair work instrument;
  - (b) any function conferred on him or her by a law of the Commonwealth.

Note: Sections 653 and 653A confer additional functions and powers on the General Manager.

Clause 657, page 505 (lines 9 and 10), omit the note.

Clause 657, page 505 (line 12), omit “assisting the President”, substitute “performing his or her functions”.

Clause 658, page 505 (lines 24 and 25), omit “the General Manager’s review of developments in making enterprise agreements”, substitute “the conduct by the General Manager of the review and research, and the preparation of the report.”.

Clause 671, page 509 (line 14), omit “in relation to assisting the President”.

Clause 713, page 530 (lines 6 to 12), omit subclause (2), substitute:

- (2) However, in the case of an individual none of the following are admissible in evidence against the individual in criminal proceedings:
- (a) the record or document produced;
  - (b) producing the record or document;
  - (c) any information, document or thing obtained as a direct or indirect consequence of producing the record or document;
  - (d) any record or document that is inspected or copied under paragraph 709(e);
  - (e) any information, document or thing obtained as a direct or indirect consequence of inspecting or copying a record or document under paragraph 709(e).

Clause 716, page 533 (after line 11), after subclause (4), insert:

*Relationship with civil remedy provisions*

- (4A) An inspector must not apply for an order under Division 2 of Part 4-1 in relation to a contravention of a civil remedy provision by a person if:
- (a) the inspector has given the person a notice in relation to the contravention; and
  - (b) either of the following subparagraphs applies:
    - (i) the notice has not been withdrawn, and the person has complied with the notice;
    - (ii) the person has made an application under section 717 in relation to the notice that has not been completely dealt with.

Note: A person other than an inspector who is otherwise entitled to apply for an order in relation to the contravention may do so.

- (4B) A person who complies with a notice in relation to a contravention of a civil remedy provision is not taken:
- (a) to have admitted to contravening the provision; or
  - (b) to have been found to have contravened the provision.

Page 575 (after line 13), at the end of the bill, add:

### **Schedule 1—Transitional provisions**

Note: See section 574A.

#### **1 Definitions**

- (1) For the purposes of this Schedule, unless a contrary intention appears, expressions used in this Schedule that are defined in the *Workplace Relations Act 1996* (other than Schedule 1 to that Act) have the same meanings as they have in that Act.
- (2) If:
  - (a) a provision of this Schedule uses an expression defined in both the *Workplace Relations Act 1996* and this Act; and
  - (b) it is clear from the context of the provision which of those meanings is intended to apply in that provision;
 the expression has that meaning.

#### **2 Appointments to Fair Work Australia**

- (1) An appointment that is:
  - (a) to an office of the Commission mentioned in a table item below; and
  - (b) in force immediately before the commencement time for the table item;
 is taken, after that time, to be an appointment, under section 626 of this Act, to the office of FWA mentioned in the table item.

Note: The person continues to be appointed to the Commission (see subclause (3)).

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#### **Appointments to FWA**

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	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Office of the Commission</b>	<b>Office of FWA</b>	<b>Commencement time</b>
1	President of the Commission	President of FWA	The day proclaimed for the purposes of item 2 of the table in subsection 2(1) of this Act.
2	Vice President of the Commission	Deputy President of FWA	The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.
3	Senior Deputy President of the Commission	Deputy President of FWA	The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of the FW Act.

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<b>Appointments to FWA</b>			
<b>Item</b>	<b>Column 1 Office of the Commission</b>	<b>Column 2 Office of FWA</b>	<b>Column 3 Commencement time</b>
4	Deputy President of the Commission	Deputy President of FWA	The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.
5	Commissioner of the Commission	Commissioner of FWA	The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.

- (2) Subclause (1) does not apply to a member of the Commission who:
- was appointed as a member of a prescribed State industrial authority (within the meaning of the *Workplace Relations Act 1996*) before being appointed as a member of the Commission; and
  - still holds that appointment as a member of the prescribed State industrial authority.

*Dual appointments*

- (3) Despite any provision of the *Workplace Relations Act 1996* or this Act, a person who is taken to have been appointed as an FWA Member under this clause continues also to hold office under the *Workplace Relations Act 1996*.

Note: The terms and conditions of a person who is taken to have been appointed as an FWA Member are the terms and conditions that attach to his or her appointment under the *Workplace Relations Act 1996* (see clause 3).

### 3 Terms and conditions

- (1) A person who is taken to have been appointed as an FWA Member under clause 2:
- holds office under this Act on the same terms and conditions as attach, or attached, to his or her appointment under the *Workplace Relations Act 1996* (including under subsections 63(2) and (3) of that Act); and
  - is entitled to the same designation as he or she is, or was, entitled to in relation to his or her appointment under the *Workplace Relations Act 1996* (including the designation the person has, or had, because of subsection 80(2) of the *Industrial Relations (Consequential Provisions) Act 1988*).
- (2) To avoid doubt, subclause (1):
- has effect despite subsections 633(1) and 644(1) of this Act; and
  - continues the operation of the *Judges' Pensions Act 1968* in relation to a person taken to have been appointed under clause 2 and to whom that Act applied as a member of the Commission.
- (3) For the purposes of determining the remuneration of a person who is taken to have been appointed as an FWA Member under clause 2:
- sections 635 and 637 of this Act do not apply; and

- (b) sections 79 and 81 of the *Workplace Relations Act 1996* continue to apply in relation to the person's appointment as both an FWA Member and a member of the Commission.

#### 4 Seniority of FWA Members

- (1) If a person who is a member of the Commission is taken to have been appointed as an FWA Member under clause 2, the day on which the person's appointment took effect is, for the purposes of section 619 of this Act, taken to be the day on which the person was appointed as such a member of the Commission.
- (2) If 2 or more such persons were appointed to the Commission on the same day, their seniority is, for the purposes of section 619 of this Act, to be determined in accordance with the precedence assigned to them under section 65 of the *Workplace Relations Act 1996*.

#### 5 Procedural rules

Section 609 of this Act has effect, in relation to any time at which the President is the only FWA Member, as if the words "After consulting the other FWA Members," were omitted from subsection (1) of that section.

#### 6 Transfer of assets and liabilities

- (1) The person referred to in column 1 of an item of the following table must arrange for the transfer, on the first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act, of assets and liabilities of the body referred to in column 2 of the item of the following table to the body referred to in column 3 of the item of the following table.

<b>Transfer of assets and liabilities</b>			
<b>Item</b>	<b>Column 1 Office-holder who enters arrangement with FWA</b>	<b>Column 2 Body whose assets and liabilities are transferred</b>	<b>Column 3 Body to which assets and liabilities are transferred</b>
1	Director of the AFPC Secretariat	AFPC Secretariat	FWA
2	Industrial Registrar	Australian Industrial Registry	FWA
3	Workplace Authority Director	Workplace Authority	Office of the Fair Work Ombudsman
4	Workplace Ombudsman	Office of the Workplace Ombudsman	Office of the Fair Work Ombudsman

- (2) Despite subclause (1), the Minister may, before the day mentioned in that subclause, determine one or more of the following by writing:
- (a) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred to a different body (as specified in the determination) from the one referred to in column 3 of the table;

- (b) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred on a different day (as specified in the determination) from the one referred to in subclause (1);
  - (c) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred in accordance with regulations made, or to be made, for the purposes of this paragraph.
- (3) A determination under subclause (2):
- (a) has effect accordingly; and
  - (b) is not a legislative instrument.
- (4) In this clause, a reference to an asset of a body includes a reference to a record or any other information that is in the custody of, or under the control of, the body.

### 7 Additional function and power of the General Manager

The General Manager of FWA may enter into an arrangement with the person referred to in column 1 of an item of the following table for FWA to provide assistance to the body referred to in column 2 of the item for the purpose of performing functions on and after the WR Act repeal day.

<b>Arrangements between FWA and body</b>		
	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Office-holder who enters arrangement with FWA</b>	<b>Body to which assistance is provided</b>
1	Industrial Registrar	Australian Industrial Registry
2	Workplace Authority Director	Workplace Authority
3	Director of the AFPC Secretariat	AFPC Secretariat

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

Clause 174, page 165 (after line 12), at the end of the clause, add:

*Regulations may prescribe additional content and form requirements etc.*

- (6) The regulations may prescribe other matters relating to the content or form of the notice, or the manner in which employers may give the notice to employees.

Clause 176, page 166 (line 28), after “agreement”, insert “, or has revoked the status of the organisation as his or her bargaining representative for the agreement under subsection 178A(2)”.

Clause 176, page 167 (line 21), at the end of subclause (2), add:

- ; or (f) the employee has revoked the status of the organisation as his or her bargaining representative for the agreement under subsection 178A(2).

Page 169 (after line 8), after clause 178, insert:

**178A Revocation of appointment of bargaining representatives etc.**

- (1) The appointment of a bargaining representative for an enterprise agreement may be revoked by written instrument.
- (2) If a person would, apart from this subsection, be a bargaining representative of an employee for an enterprise agreement because of the operation of paragraph 176(1)(b) or subsection 176(2) (which deal with employee organisations), the employee may, by written instrument, revoke the person's status as the employee's bargaining representative for the agreement.
- (3) A copy of an instrument under subsection (1) or (2):
  - (a) for an instrument made by an employee who will be covered by the agreement—must be given to the employee's employer; and
  - (b) for an instrument made by an employer that will be covered by a proposed enterprise agreement—must be given to the bargaining representative and, on request, to a bargaining representative of an employee who will be covered by the agreement.
- (4) The regulations may prescribe matters relating to the content or form of the instrument of revocation, or the manner in which the copy of the instrument may be given.

Clause 186, page 176 (lines 3 to 8), omit subclause (3), substitute:

- (3) FWA must be satisfied that the group of employees covered by the agreement was fairly chosen.
- (3A) If the agreement does not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding whether the group of employees covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

Clause 228, page 207 (after line 19), at the end of subclause (1), add:

- ; (f) recognising and bargaining with the other bargaining representatives for the agreement.

Clause 229, page 209 (lines 6 to 10), omit subclause (5), substitute:

- (5) FWA may consider the application even if it does not comply with paragraph (4)(b) or (c) if FWA is satisfied that it is appropriate in all the circumstances to do so.

Clause 237, page 215 (lines 8 to 11), omit paragraph (2)(c), substitute:

- (c) that the group of employees who will be covered by the agreement was fairly chosen; and

Clause 237, page 215 (after line 16), after subclause (3), insert:

- (3A) If the agreement will not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding for the purposes of paragraph (2)(c) whether the group of employees who will be covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

Clause 238, page 216 (lines 23 to 26), omit paragraph (4)(c), substitute:

- (c) that the group of employees who will be covered by the agreement proposed to be specified in the scope order was fairly chosen; and

Clause 238, page 216 (after line 27), after subclause (4), insert:

*Matters which FWA must take into account*

- (4A) If the agreement proposed to be specified in the scope order will not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding for the purposes of paragraph (4)(c) whether the group of employees who will be covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

Clause 539, page 430 (table item 5), omit the table item.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Ludwig, in respect of clause 179.

Question—That clause 179 stand as printed—put and negatived.

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

Clause 193, page 182 (after line 15), at the end of the clause, add:

*FWA may assume employee better off overall in certain circumstances*

- (7) For the purposes of determining whether an enterprise agreement passes the better off overall test, if a class of employees to which a particular employee belongs would be better off if the agreement applied to that class than if the relevant modern award applied to that class, FWA is entitled to assume, in the absence of evidence to the contrary, that the employee would be better off overall if the agreement applied to the employee.

Clause 207, page 196 (lines 5 to 10), omit subclause (5).

Clause 211, page 198 (line 6), omit “and”.

Clause 211, page 198 (lines 7 to 9), omit paragraph (1)(c), substitute:

unless FWA is satisfied that there are serious public interest grounds for not approving the variation.

Clause 211, page 198 (line 26), omit “those provisions”, substitute “sections 180 and 188”.

Clause 211, page 199 (line 3), omit “and subparagraph 188(a)(ii)”.

Clause 211, page 199 (after line 4), after paragraph (3)(h), insert:

- (ha) references in paragraphs 186(2)(c) and (d) to the agreement were references to the enterprise agreement as proposed to be varied; and

(hb) subparagraph 188(a)(ii) were omitted; and

Page 202 (after line 5), after clause 217, insert:

**217A FWA may deal with certain disputes about variations**

- (1) This section applies if a variation of an enterprise agreement is proposed.

- (2) An employer or employee organisation covered by the enterprise agreement or an affected employee for the variation may apply to FWA for FWA to deal with a dispute about the proposed variation if the employer and the affected employees are unable to resolve the dispute.
- (3) FWA must not arbitrate (however described) the dispute.

Page 230 (after line 20), after clause 256, insert:

**256A How employees, employers and employer organisations are to be described**

- (1) This section applies if a provision of this Part requires or permits an instrument of any kind to specify the employers, employees or employee organisations covered, or who will be covered, by an enterprise agreement or other instrument.
- (2) The employees may be specified by class or by name.
- (3) The employers and employee organisations must be specified by name.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (2), the class may be described by reference to one or more of the following:
  - (a) a particular industry or part of an industry;
  - (b) a particular kind of work;
  - (c) a particular type of employment;
  - (d) a particular classification, job level or grade.

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

Page 251 (after line 26), at the end of Division 7, add:

**281A How employees, employers and employer organisations are to be described**

- (1) This section applies if a provision of this Part requires or permits an instrument of any kind to specify the employers, employees or employee organisations covered, or who will be covered, by a workplace determination or other instrument.
- (2) The employees may be specified by class or by name.
- (3) The employers and employee organisations must be specified by name.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (2), the class may be described by reference to one or more of the following:
  - (a) a particular industry or part of an industry;
  - (b) a particular kind of work;
  - (c) a particular type of employment;
  - (d) a particular classification, job level or grade.

Senator Ludwig moved—That the committee report progress and ask leave to sit again.

Question put and passed.

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The Acting Deputy President (Senator Carol Brown) resumed the chair and the Temporary Chair of Committees reported that the committee had considered the bill, made progress and asked leave to sit again.

Ordered, on the motion of Senator Ludwig, that the committee have leave to sit again at a later hour.

**29 FUEL AND ENERGY—SELECT COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator Parry, by leave and at the request of the Chair of the Select Committee on Fuel and Energy (Senator Cormann), moved—That the Select Committee on Fuel and Energy be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today.

Question put and passed.

**30 FAIR WORK BILL 2008**

Order of the day 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, as amended.

On the motion of the Minister for Human Services (Senator Ludwig) the following amendments, taken together by leave, were agreed to:

Clause 524, page 417 (line 23), omit “Note:”, substitute “Note 1:”.

Clause 524, page 417 (after line 25), at the end of subclause 524(2), add:

Note 2: An enterprise agreement or a contract of employment may also include terms that impose additional requirements that an employer must meet before standing down an employee (for example requirements relating to consultation or notice).

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

Clause 734, page 543 (line 19), before “A”, insert “(1)”.

Clause 734, page 543 (line 22), omit “another”, substitute “an anti-discrimination”.

Clause 734, page 543 (after line 27), at the end of the clause, add:

- (2) A person must not make an application or complaint under an anti-discrimination law in relation to conduct that does not involve the dismissal of the person if:
- (a) a general protections court application has been made by, or on behalf of, the person in relation to the conduct; and
  - (b) the application has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction.

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

Clause 596, page 470 (after line 6), at the end of subclause (2), add:

Note: Circumstances in which FWA might grant permission for a person to be represented by a lawyer or paid agent include the following:

- (a) where a person is from a non-English speaking background or has difficulty reading or writing;
- (b) where a small business is a party to a matter and has no specialist human resources staff while the other party is represented by an officer or employee of an industrial association or another person with experience in workplace relations advocacy.

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

Clause 12, page 10 (before line 25), before the definition of *applicable award-derived long service leave terms*, insert:

*applicable agreement-derived long service leave terms*: see subsection 113(5).

Clause 16, page 34 (line 15), omit “However”, substitute “Despite subsection (1)”.

Clause 16, page 34 (after line 28), at the end of the clause, add:

*Meaning for pieceworkers for the purpose of section 206*

- (3) The regulations may prescribe, or provide for the determination of, the base rate of pay, for the purpose of section 206, of an employee who is a pieceworker. If the regulations do so, the employee’s *base rate of pay*, for the purpose of that section, is as prescribed by, or determined in accordance with, the regulations.

Note: Section 206 deals with an employee’s base rate of pay under an enterprise agreement.

Clause 55, page 68 (line 8), omit “only if the”, substitute “only to the extent that the”.

Clause 55, page 68 (lines 30 to 36), omit subclause (5), substitute:

*Enterprise agreements may include terms that have the same effect as provisions of the National Employment Standards*

- (5) An enterprise agreement may include terms that have the same (or substantially the same) effect as provisions of the National Employment Standards, whether or not ancillary or supplementary terms are included as referred to in subsection (4).

*Effect of terms that give an employee the same entitlement as under the National Employment Standards*

- (6) To avoid doubt, if a modern award includes terms permitted by subsection (4), or an enterprise agreement includes terms permitted by subsection (4) or (5), then, to the extent that the terms give an employee an entitlement (the *award or agreement entitlement*) that is the same as an entitlement (the *NES entitlement*) of the employee under the National Employment Standards:
  - (a) those terms operate in parallel with the employee’s NES entitlement, but not so as to give the employee a double benefit; and
  - (b) the provisions of the National Employment Standards relating to the NES entitlement apply, as a minimum standard, to the award or agreement entitlement.

Note: For example, if the award or agreement entitlement is to 6 weeks of paid annual leave per year, the provisions of the National Employment Standards relating to the accrual and taking of paid annual leave will apply, as a minimum standard, to 4 weeks of that leave.

*Terms permitted by subsection (4) or (5) do not contravene subsection (1)*

- (7) To the extent that a term of a modern award or enterprise agreement is permitted by subsection (4) or (5), the term does not contravene subsection (1).

Note: A term of a modern award has no effect to the extent that it contravenes this section (see section 56). An enterprise agreement that includes a term that contravenes this section must not be approved (see section 186) and a term of an enterprise agreement has no effect to the extent that it contravenes this section (see section 56).

Clause 61, page 72 (lines 5 and 6), omit subclause (1), substitute:

- (1) This Part sets minimum standards that apply to the employment of employees which cannot be displaced, even if an enterprise agreement includes terms of the kind referred to in subsection 55(5).

Note: Subsection 55(5) allows enterprise agreements to include terms that have the same (or substantially the same) effect as provisions of the National Employment Standards.

Clause 113, page 114 (line 3) to page 115 (line 19), omit the clause, substitute:

### **113 Entitlement to long service leave**

*Entitlement in accordance with applicable award-derived long service leave terms*

- (1) If there are applicable award-derived long service leave terms (see subsection (3)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.

Note: This Act does not exclude State and Territory laws that deal with long service leave, except in relation to employees who are entitled to long service leave under this Division (see paragraph 27(2)(g)), and except as provided in subsection 113A(3).

- (2) However, subsection (1) does not apply if:
- (a) a workplace agreement, or an AWA, that came into operation before the commencement of this Part applies to the employee; or
  - (b) one of the following kinds of instrument that came into operation before the commencement of this Part applies to the employee and expressly deals with long service leave:
    - (i) an enterprise agreement;
    - (ii) a preserved State agreement;
    - (iii) a workplace determination;
    - (iv) a pre-reform certified agreement;
    - (v) a pre-reform AWA;
    - (vi) a section 170MX award;
    - (vii) an old IR agreement.

Note: If there ceases to be any agreement or instrument of a kind referred to in paragraph (a) or (b) that applies to the employee, the employee will, at that time, become entitled under subsection (1) to long service leave in accordance with applicable award-derived long service leave terms.

- (3) ***Applicable award-derived long service leave terms***, in relation to an employee, are:
- (a) terms of an award that (disregarding the effect of any instrument of a kind referred to in subsection (2)):
    - (i) would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and
    - (ii) would have entitled the employee to long service leave; and
  - (b) any terms of the award that are ancillary or incidental to the terms referred to in paragraph (a).

*Entitlement in accordance with applicable agreement-derived long service leave terms*

- (4) If there are applicable agreement-derived long service leave terms (see subsection (5)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.
- (5) There are ***applicable agreement-derived long service leave terms***, in relation to an employee if:
- (a) an order under subsection (6) is in operation in relation to terms of an instrument; and
  - (b) those terms of the instrument would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and
  - (c) there are no applicable award-derived long service leave terms in relation to the employee.
- (6) If FWA is satisfied that:
- (a) any of the following instruments that was in operation immediately before the commencement of this Part contained terms entitling employees to long service leave:
    - (i) an enterprise agreement;
    - (ii) a collective agreement;
    - (iii) a pre-reform certified agreement;
    - (iv) an old IR agreement; and
  - (b) those terms constituted a long service leave scheme that was applying in more than one State or Territory; and
  - (c) the scheme, considered on an overall basis, is no less beneficial to the employees than the long service leave entitlements that would otherwise apply in relation to the employees under State and Territory laws;

FWA may, on application by, or on behalf of, a person to whom the instrument applies, make an order that those terms of the instrument (and any terms that are ancillary or incidental to those terms) are applicable agreement-derived long service leave terms.

*References to instruments*

- (7) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

**113A Enterprise agreements may contain terms discounting service under prior agreements etc. in certain circumstances**

- (1) This section applies if:
- (a) an instrument (the *first instrument*) of one of the following kinds that came into operation before the commencement of this Part applies to an employee on or after the commencement of this Part:
    - (i) an enterprise agreement;
    - (ii) a workplace agreement;
    - (iii) a workplace determination;
    - (iv) a preserved State agreement;
    - (v) an AWA;
    - (vi) a pre-reform certified agreement;
    - (vii) a pre-reform AWA;
    - (viii) an old IR agreement;
    - (ix) a section 170MX award; and
  - (b) the instrument states that the employee is not entitled to long service leave; and
  - (c) the instrument ceases, for whatever reason, to apply to the employee; and
  - (d) immediately after the first instrument ceases to apply, an enterprise agreement (the *replacement agreement*) starts to apply to the employee.
- (2) The replacement agreement may include terms to the effect that an employee's service with the employer during a specified period (the *excluded period*) (being some or all of the period when the first instrument applied to the employee) does not count as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory.
- (3) If the replacement agreement includes terms as permitted by subsection (2), the excluded period does not count, and never again counts, as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory, unless a later agreement provides otherwise. This subsection has effect despite sections 27 and 29.

- (4) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Clause 117, page 119 (lines 24 to 28), omit paragraph (2)(b), substitute:

- (b) the employer has paid to the employee (or to another person on the employee's behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee's behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.

Clause 121, page 122 (line 5), before "Section", insert "(1)".

Clause 121, page 122 (after line 11), at the end of the clause, add:

- (2) A modern award may include a term specifying other situations in which section 119 does not apply to the termination of an employee's employment.
- (3) If a modern award that is in operation includes such a term (the **award term**), an enterprise agreement may:
- (a) incorporate the award term by reference (and as in force from time to time) into the enterprise agreement; and
- (b) provide that the incorporated term covers some or all of the employees who are also covered by the award term.

Clause 123, page 124 (lines 11 to 19), omit paragraph (3)(a).

Clause 186, page 176 (line 27), after "Note", insert "1".

Clause 186, page 176 (after line 29), after the note at the end of subclause (6), add:

Note 2: However, this does not prevent FWA from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4).

Clause 738, page 545 (line 16), after "employment", insert "or other written agreement".

Clause 738, page 545 (after line 20), at the end of the clause, add:

- ; or (d) a determination under the *Public Service Act 1999* includes a term that provides a procedure for dealing with disputes arising under the determination or in relation to the National Employment Standards.

Clause 739, page 545 (line 26), omit "76(4)", substitute "76(4), unless:

- (a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to FWA dealing with the matter; or
- (b) a determination under the *Public Service Act 1999* authorises FWA to deal with the matter".

Clause 739, page 545 (after line 26), at the end of subclause (2), add:

Note: This does not prevent FWA from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

Clause 740, page 546 (line 16), omit “76(4)”, substitute “76(4), unless:

- (a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to the person dealing with the matter; or
- (b) a determination under the *Public Service Act 1999* authorises the person to deal with the matter”.

Clause 740, page 546 (after line 16), at the end of subclause (2), add:

Note: This does not prevent a person from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

Clause 758, page 554 (lines 5 to 12), omit the clause, substitute:

#### **758 Object of this Division**

The object of this Division is to give effect, or further effect, to:

- (a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website ([www.ilo.org](http://www.ilo.org)).

Clause 771, page 559 (lines 12 to 14), omit paragraph 771(c), substitute:

- (c) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (d) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Clause 784, page 565 (lines 5 to 12), omit the clause, substitute:

#### **784 Object of this Division**

The object of this Division is to give effect, or further effect, to:

- (a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website ([www.ilo.org](http://www.ilo.org)).

Senator Ludwig moved the following amendments together by leave:

No. 1—Clause 12, page 14 (line 22), at the end of the definition of *employee claim action*, add “and paragraph 471(4A)(c)”.

No. 2—Clause 12, page 14 (line 29), at the end of the definition of *employee response action*, add “and paragraph 471(4A)(d)”.

No. 3—Clause 19, page 37 (after line 8), at the end of the clause, add:

Note: In this section, *employee* and *employer* have their ordinary meanings (see section 11).

No. 4—Clause 409, page 336 (line 17), before “about”, insert “only”.

No. 5—Clause 409, page 336 (line 18), after “to”, insert “only”.

No. 6—Clause 413, page 341 (line 22), omit “Neither”, substitute “None”.

No. 7—Clause 413, page 341 (line 24), omit “the industrial action”, substitute “industrial action in relation to the agreement”.

No. 8—Clause 413, page 341 (line 26), omit “the industrial action.”, substitute “industrial action in relation to the agreement;”.

No. 9—Clause 413, page 341 (after line 26), at the end of subclause (7), add:  
; (c) a serious breach declaration in relation to the agreement.

No. 10—Clause 417, page 344 (lines 17 and 18), omit “to whom the agreement or determination applies”, substitute “who is covered by the agreement or determination”.

No. 11—Clause 417, page 344 (lines 19 and 20), omit “to which the agreement or determination applies”, substitute “that is covered by the agreement or determination”.

No. 12—Clause 426, page 355 (line 7), after “disrupt”, insert “, for an extended period;”.

No. 13—Clause 426, page 355 (line 9), before “reduce”, insert “significantly”.

No. 14—Clause 426, page 355 (line 11), after “other”, insert “serious”.

No. 15—Clause 426, page 355 (after line 11), after subclause (4), insert:

*Requirement—harm is imminent*

(4A) If the protected industrial action is threatening to cause significant harm as referred to in subsection (3), FWA must be satisfied that the harm is imminent.

No. 16—Clause 438, page 363 (line 5), omit “apply to”, substitute “cover”.

No. 17—Clause 470, page 383 (lines 19 to 31), omit subclause (4), substitute:

(4) If the industrial action is, or includes, an overtime ban, this section does not apply, in relation to a period of overtime to which the ban applies, unless:

(a) the employer requested or required the employee to work the period of overtime; and

(b) the employee refused to work the period of overtime; and

(c) the refusal was a contravention of the employee’s obligations under a modern award, enterprise agreement or contract of employment.

(5) If:

(a) the industrial action is, or includes, an overtime ban; and

(b) this section applies in relation to a period of overtime to which the ban applies;

then for the purposes of this section, the total duration of the industrial action is, or includes, the period of overtime to which the ban applies.

No. 18—Clause 471, page 384 (lines 28 to 30), omit paragraph (4)(c), substitute:

(c) the employer gives to the employee a written notice stating that, because of the ban:

- (i) the employee will not be entitled to any payments; and
- (ii) the employer refuses to accept the performance of any work by the employee until the employee is prepared to perform all of his or her normal duties;

No. 19—Clause 471, page 384 (after line 32), after subclause (4), insert:

(4A) If:

- (a) an employer has given an employee a notice under paragraph (4)(c); and
- (b) the employee fails or refuses to attend for work, or fails or refuses to perform any work at all if he or she attends for work, during the industrial action period;

then:

- (c) the failure or refusal is *employee claim action*, even if it does not satisfy subsections 409(2) and 413(4), if the related industrial action referred to in paragraph (4)(a) is employee claim action; or
- (d) the failure or refusal is *employee response action*, even if it does not satisfy subsection 413(4), if the related industrial action referred to in paragraph (4)(a) is employee response action.

No. 20—Clause 474, page 387 (after line 25), after subclause (2), insert:

(2A) If:

- (a) the industrial action is, or includes, an overtime ban; and
- (b) this section applies in relation to a period of overtime to which the ban applies;

then, for the purposes of this section:

- (c) the total duration of the industrial action is, or includes, the period of overtime to which the ban applies; and
- (d) if paragraph (1)(b) applies—the period of 4 hours mentioned in that paragraph includes the period of overtime to which the ban applies.

No. 21—Clause 539, page 433 (table item 14, paragraph (c) of column 2), omit “to which the enterprise agreement or workplace determination concerned applies”, substitute “covered by the enterprise agreement or workplace determination concerned”.

Debate ensued.

The question was divided—

Question—That amendments nos 1 to 11 and 16 to 21 be agreed to—put and passed. All Australian Greens senators, by leave, recorded their votes for the noes in respect of the question for amendment no. 9.

Question—That amendments nos 12 to 15 be agreed to—put.

The committee divided—

AYES, 31

Senators—

Arbib	Crossin	Hutchins	Polley
Bilyk	Farrell	Ludlam	Pratt
Bishop	Faulkner	Lundy	Siewert
Brown, Bob	Feeney	Marshall	Stephens
Brown, Carol	Forshaw	McEwen	Sterle
Cameron	Furner	Milne	Wortley
Collins	Hanson-Young	Moore	Xenophon
Conroy	Hogg	O'Brien (Teller)	

NOES, 31

Senators—

Abetz	Cormann	Johnston	Payne
Barnett	Eggleston	Joyce	Ronaldson
Birmingham	Ferguson	Kroger	Ryan
Boswell	Fielding	Macdonald	Scullion
Boyce	Fifield	Mason	Troeth
Brandis	Fisher	McGauran	Trood
Bushby (Teller)	Heffernan	Nash	Williams
Colbeck	Humphries	Parry	

The ayes and noes were equal and so the question was negatived.

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

Clause 12, page 26 (after line 22), after the definition of *registered employee association*, insert:

*reinstatement* includes appointment by an associated entity in the circumstances provided for in an order to which subsection 391(1A) applies.

Clause 391, page 325 (after line 28), after subclause (1), insert:

(1A) If:

- (a) the position in which the person was employed immediately before the dismissal is no longer a position with the person's employer at the time of the dismissal; and
- (b) that position, or an equivalent position, is a position with an associated entity of the employer;

the order under subsection (1) may be an order to the associated entity to:

- (c) appoint the person to the position in which the person was employed immediately before the dismissal; or
- (d) appoint the person to another position on terms and conditions no less favourable than those on which the person was employed immediately before the dismissal.

Clause 391, page 326 (line 7), at the end of paragraph (2)(b), add “, or (if subsection (1A) applies) the associated entity”.

Senator Abetz moved the following amendments together by leave:

Heading to subclause 311(1), page 269 (line 10), omit “*and transferring work*”, substitute “, *transferring work and time of transmission*”.

Clause 311, page 269 (lines 21 and 22), omit paragraph 311(1)(d), substitute:

- (d) the new employer has become the successor, transmittee or assignee of the business or part of the business in which the employee worked for the old employer;
- (e) the time at which the new employer becomes the successor, transmittee or assignee of the business being transferred is the *time of transmission*.

Clause 311, page 269 (line 25), omit “paragraphs (1)(a), (b) and (c)”, substitute “paragraphs (1)(a), (b), (c) and (d)”.

Clause 311, page 269 (line 28) to page 271 (line 2), omit subclauses 311(3) to (6), substitute:

- (3) A person is also a *transferring employee* for the purposes of this Part if:
  - (a) the person is employed by the old employer at any time within the period of 1 month before the time of transmission; and
  - (b) the person’s employment with the old employer is terminated by the old employer before the time of transmission for redundancy reasons or for reasons that include redundancy; and
  - (c) the person becomes employed by the new employer in the business being transferred within 2 months after the time of transmission.
- (4) A reference to a particular state of affairs existing in relation to a transferring employee immediately before the time of transmission is to be read as a reference to that state of affairs existing immediately before the person last ceased to be an employee of the old employer.

Page 272, after line 2, after clause 313, insert:

### **313A Coverage of a transferable instrument**

- (1) Subject to subsection (3), a transferable instrument that covers the new employer and the transferring employee because of section 313 (or any other person because of another provision of this Part) ceases to have coverage on the earlier of:
  - (a) the date the instrument ceases coverage under its own terms;
  - (b) 12 months after the transfer time.
- (2) Subject to subsection (3), after the transferable instrument ceases to have coverage in accordance with subsection (1), the new employer and the transferring employee are covered by:
  - (a) the modern award which is expressed to cover the new employer and the transferring employee; or
  - (b) the enterprise agreement which is expressed to cover the new employer and the transferring employee;
 whichever is most beneficial to the employee.
- (3) If the redundancy pay provisions in the transferable instrument are more beneficial to the employee than the provisions in the instrument which would otherwise take effect under subsection (2), the redundancy pay provisions in the transferable instrument continue to cover the transferring employee until 24 months after the transfer time.

Clause 319, page 276 (lines 23 to 31), omit paragraphs (1)(a) and (b).

Clause 319, page 277 (lines 14 and 15), omit paragraph (2)(b).

Clause 319, page 277 (lines 19 to 22), omit paragraph (2)(d).

Debate ensued.

Senator Abetz, by leave, withdrew the amendments.

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

Clause 318, page 276 (line 12), omit paragraph (3)(d), substitute:

- (d) whether the transferable instrument would have a negative impact on the productivity of the new employer's workplace;
- (e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument covering the new employer;
- (f) the degree of business synergy between the transferable instrument and any workplace instrument that already covers the new employer;
- (g) the public interest.

Clause 319, page 277 (line 34), omit paragraph (3)(d), substitute:

- (d) whether the transferable instrument would have a negative impact on the productivity of the new employer's workplace;
- (e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument covering the new employer;
- (f) the degree of business synergy between the transferable instrument and any workplace instrument that already covers the new employer;
- (g) the public interest.

Clause 320, page 278 (line 23), at the end of subclause (2), add:

- ; or (c) to enable the transferable instrument to operate in a way that is better aligned to the working arrangements of the new employer's enterprise.

Clause 320, page 279 (line 14), omit paragraph (4)(d), substitute:

- (d) whether the transferable instrument, without the variation, would have a negative impact on the productivity of the new employer's workplace;
- (e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument, without the variation;
- (f) the degree of business synergy between the transferable instrument, without the variation, and any workplace instrument that already covers the new employer;
- (g) the public interest.

Senator Siewert moved the following amendments together by leave:

Clause 65, page 76 (lines 5 to 8), omit subclause (1), substitute:

- (1) An employee may request the employer for a change in working arrangements to assist the employee to care for someone who is:
  - (a) a child of the employee, or a child the employee has responsibility for the care of, if the child:

- (i) is under school age; or
- (ii) is under 18 and has a disability; or
- (b) a person in need of care who is:
  - (i) the spouse or de facto partner of the employee; or
  - (ii) a member of the employee's immediate family; or
  - (iii) a member of the employee's household.

Clause 65, page 76 (lines 27 to 29), omit subclause (4), substitute:

- (4) If an employee makes a request in accordance with subsection (3):
  - (a) the employer must, within 28 days of receiving the written request, meet with the employee to discuss the request; and
  - (b) the employer must give the employee a written response to the request within 14 days of the meeting, stating whether the employer grants or refuses the request.

Clause 65, page 77 (after line 2), at the end of the clause, add:

*FWA can review refusal of request*

- (7) If the employer refuses the request, the employee may apply to FWA to review the employer's decision on the following grounds:
  - (a) because there has been a contravention of a requirement of this section; or
  - (b) because there has been a misunderstanding or misapplication of a fact relating to the application.
- (8) The application must be made within 7 days after the employer gives the employee a written response under subsection (4), unless FWA is satisfied there are circumstances which justify a late application.
- (9) FWA may make:
  - (a) an order for reconsideration of the request; and
  - (b) an award of compensation to be paid by the employer to the employee.
- (10) The amount of compensation must be an amount, not exceeding 26 weeks' pay for the employee, as FWA considers fair in all the circumstances.

Debate ensued.

Senator Ludwig moved—That the committee report progress and ask leave to sit again.

Question put and passed.

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The Acting Deputy President (Senator Bishop) resumed the chair and the Temporary Chair of Committees reported that the committee had considered the bill, made progress and asked leave to sit again.

Ordered, on the motion of Senator Ludwig, that the committee have leave to sit again at a later hour.

**31 ORDER OF BUSINESS—REARRANGEMENT**

The Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas) moved—That intervening business be postponed till after consideration of:

- (a) government business order of the day no. 5 (Social Security Amendment (Liquid Assets Waiting Period) Bill 2009);
- (b) government business order of the day no. 6 (consideration of a message from the House of Representatives to vary the appointment of the Joint Standing Committee on Foreign Affairs, Defence and Trade); and
- (c) government business order of the day no. 2 (Social Security and Veterans' Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009) second reading speeches only).

Question put and passed.

**32 SOCIAL SECURITY AMENDMENT (LIQUID ASSETS WAITING PERIOD) BILL 2009**

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

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Senator McLucas the bill was read a third time.

**33 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—  
VARIATION OF APPOINTMENT**

Order of the day read for the consideration of message no. 274 from the House of Representatives (*see entry no. 35, 11 March 2009*).

The Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas), by leave, moved—That the Senate concurs with the resolution of the House of Representatives relating to the variation of appointment of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

Debate ensued.

Question put and passed.

**34 SOCIAL SECURITY AND VETERANS' ENTITLEMENTS AMENDMENT  
(COMMONWEALTH SENIORS HEALTH CARD) BILL 2009**

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

Debate resumed.

*At 2 pm:* Debate was interrupted while Senator Scullion was speaking.

**35 QUESTIONS**

Questions without notice were answered.

**36 MOTION TO TAKE NOTE OF ANSWERS**

Senator Boswell moved—That the Senate take note of the answers given by the Minister for Climate Change and Water (Senator Wong) to questions without notice asked by Senators Boswell and Milne today relating to the proposed emissions trading scheme.

Debate ensued.

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*Documents:* Senator Cormann, by leave, tabled the following documents:

Carbon Pollution Reduction Scheme—Treasury modelling—Copies of letters from—

Chair of the Select Committee on Fuel and Energy (Senator Cormann) to the Treasurer (Mr Swan), dated 18 March 2009.

Deputy Vice-Chancellor (Research), Monash University (Professor Edwina Cornish) to the Treasurer (Mr Swan), dated 18 March 2009.

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Debate continued.

Question put and passed.

**37 DEATH OF CORPORAL MATHEW HOPKINS**

The Leader of the Government in the Senate (Senator Evans), by leave, moved—That the Senate records its deep regret at the death, on 16 March 2009, of Corporal Mathew Hopkins, while on combat operations in Afghanistan, and places on record its appreciation of his service to his country, and tenders its profound sympathy to his family and colleagues in their bereavement.

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

Question passed.

**38 SPORT—FIFA WORLD CUP BID—MINISTERIAL STATEMENT—DOCUMENT**

The Minister for Climate Change and Water (Senator Wong) tabled the following document:

Sport—FIFA World Cup bid—Ministerial statement by the Minister for Sport (Ms Ellis), dated 18 March 2009.

**39 TREATIES—JOINT STANDING COMMITTEE—GOVERNMENT RESPONSE—93RD REPORT**

The Minister for Climate Change and Water (Senator Wong) tabled the following document:

Treaties—Joint Standing Committee—93rd report—Treaties tabled on 12 March and 14 May 2008—Government response.

**40 AUDITOR-GENERAL—AUDIT REPORT NO. 26 OF 2008-09—DOCUMENT**

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

Auditor-General—Audit report no. 26 of 2008-09—Performance audit—Rural and remote health workforce capacity – the contribution made by programs administered by the Department of Health and Ageing—Department of Health and Ageing.

**41 TREATIES—JOINT STANDING COMMITTEE—100TH REPORT**

Senator Parry, on behalf of the Joint Standing Committee on Treaties, tabled the following report:

Treaties—Joint Standing Committee—100th report—Treaties tabled on 25 June 2008 (2), dated March 2009.

Senator Parry, by leave, moved—That the Senate take note of the report.

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

**42 DOCUMENTS**

The following documents were tabled by the Clerk:

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

Airports Act—Select Legislative Instrument 2009 No. 43—Airports Legislation Amendment Regulations 2009 (No. 1) [F2009L01022]\*.

Australian Citizenship Act—Instrument IMMI 08/108—Instrument of Authorisation [F2009L01069]\*.

Broadcasting Services Act—Commercial Television Conversion Scheme Variation 2009 (No. 1) [F2009L01058]\*.

Charter of the United Nations Act—Charter of the United Nations (Sanctions — Iran) Regulations 2008—Charter of the United Nations (Sanctions — Iran) (Export Sanctioned Goods) List Amendment Determination 2009 (No. 1) [F2009L00923]\*.

Civil Aviation Act—

Civil Aviation Regulations—Instrument No. CASA EX10/09—Revocation of exemption [F2009L01057]\*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part—  
105—

AD/BELL 212/22—Tail Rotor Drive Shaft – Replacement [F2009L00977]\*.

AD/BELL 212/31—Float Bags – Inspection [F2009L00975]\*.

AD/BELL 212/32—Elevator to Horn Assembly Attachment – Modification [F2009L00974]\*.

AD/BELL 212/36 Amdt 1—Emergency Floatation System and Squib Value [F2009L00973]\*.

AD/BELL 412/14 Amdt 1—Emergency Floatation System and Squib Value [F2009L01037]\*.

AD/DHC-8/146—Main Landing Gear Stabiliser Braces [F2009L01091]\*.

AD/ECUREUIL/71 Amdt 4—Tail Rotor Blade Trailing Edge [F2009L01000]\*.

AD/PA-44/16—Ailerons [F2009L00999]\*.

AD/PA-46/6 Amdt 1—Flap Drive Mechanism [F2009L00997]\*.

AD/PA-46/8—Turbocharger Oil Scavenge Reservoir Inspection/Modification, and Lower Cowl Modification [F2009L00950]\*.

AD/PA-46/10—Aft Wing Attach Fitting Fastener Collars [F2009L00995]\*.

AD/PA-46/11—De-Ice Pressure Control Valve [F2009L00949]\*.

AD/PA-46/13—Flap Actuator Tube [F2009L00994]\*.

- AD/PA-46/14 Amdt 2—Aileron Cable Routing [F2009L00993]\*.  
 AD/PA-46/17—Aileron Balance Weight Attachment Screws [F2009L00991]\*.  
 AD/PA-46/25—Fuselage Rivet Installation [F2009L00989]\*.
- 106—  
 AD/CF6/46—Inspection of Life Limited Parts [F2009L00960]\*.  
 AD/CF6/71—Life Limited Parts [F2009L00932]\*.
- 107—  
 AD/GOV/9—Governor Control Arm Attachment Cap Screw A-1635-105 – Replacement [F2009L01027]\*.  
 AD/GOV/10 Amdt 1—Governor Flyweight Assembly [F2009L01025]\*.  
 AD/INST/56 Amdt 2—Avidyne Corporation Primary Flight Displays [F2009L01074]\*.  
 AD/PHS/3—Model 23260 and 43E-60 Low Pitch Stop Assembly – Inspection [F2009L00941]\*.  
 AD/PHS/6—Model 23e-50, Barrel Bolt Boss – Modification [F2009L00940]\*.  
 AD/PHS/12—Pacific 6533A Propeller Blade [F2009L00939]\*.  
 AD/PHS/13—Hub Rework [F2009L00938]\*.  
 AD/RAD/17—AWA VC-10 VHF Transceiver – Modification [F2009L00915]\*.  
 AD/RAD/19—“Aircom” VHF Transceiver – Modification [F2009L00914]\*.  
 AD/RAD/20—King VHF – KTR-900 Transceiver – Modification [F2009L00913]\*.  
 AD/RAD/21—Instrument Landing Systems (ILS) Instrumentation [F2009L00912]\*.  
 AD/RAD/22—Press-to-Talk Assembly – Modification [F2009L00911]\*.  
 AD/RAD/25—Bayside VHF Transceiver Modification or Retirement [F2009L00910]\*.  
 AD/RES/3—Safety Belts – Davis FDC-2700 – Inspection [F2009L00864]\*.  
 AD/RES/6—Safety Belts – Mills ME 2402 and ME 2402T – Inspection and Rectification [F2009L00863]\*.  
 AD/RES/11 Amdt 1—Eon Corporation E8000 Buckle Assemblies [F2009L00862]\*.  
 AD/RES/15—Pacific Scientific Dual Tension Reel Assembly P/Nos 0109101-01, -03, -05, -07 – Modification [F2009L00861]\*.

Corporations Act—

- Variation of Financial Stability Standard for Central Counterparties [F2009L00714]\*.  
 Variation of Financial Stability Standard for Securities Settlement Facilities [F2009L00713]\*.

Customs Act—

- Select Legislative Instrument 2009 No. 40—Customs (Prohibited Imports) Amendment Regulations 2009 (No. 1) [F2009L01001]\*.  
 Tariff Concession Orders—  
 0830239 [F2009L00641]\*.  
 0839785 [F2009L00642]\*.

0840334 [F2009L00644]\*.

0840468 [F2009L00643]\*.

Environment Protection and Biodiversity Conservation Act—  
Amendment of the list of Migratory Species [F2009L01063]\*.  
Update to the list of Migratory Species [F2009L01064]\*.

Higher Education Support Act—Higher Education Provider Approvals Nos—  
1 of 2009—Australian Institute of Professional Counsellors Pty Ltd  
[F2009L01061]\*.

2 of 2009—Canberra Institute of Technology [F2009L01062]\*.

Migration Act—Select Legislative Instrument 2009 No. 41—Migration  
Amendment Regulations 2009 (No. 2) [F2009L01048]\*.

National Health Act—

Instruments Nos PB—

20 of 2009—Amendment declaration and determination – drugs and  
medicinal preparations [F2009L01071]\*.

24 of 2009—Amendment Special Arrangements – Highly Specialised  
Drugs Program [F2009L01115]\*.

25 of 2009—Amendment Special Arrangements – Chemotherapy  
Pharmaceuticals Access Program [F2009L01116]\*.

26 of 2009—Amendment determination – conditions [F2009L01117]\*.

National Health (Australian Community Pharmacy Authority Rules)  
Amendment Determination 2009 (No. 1) [F2009L00832]\*.

Payment Systems (Regulation) Act—Select Legislative Instrument 2009 No. 44—  
Payment Systems (Regulation) Amendment Regulations 2009 (No. 1)  
[F2009L00895]\*.

Radiocommunications Act—Radiocommunications (Allocation of Spectrum  
Licences by Auction or Pre-determined Price) Amendment Determination 2009  
(No. 1) [F2009L01067]\*.

Social Security Act—Social Security (Deeming Threshold Rates) (FaHCSIA)  
Determination 2009 (No. 2) [F2009L01068]\*.

\* Explanatory statement tabled with legislative instrument.

#### 43 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Climate Change and Water (Senator Wong) moved—That intervening  
business be postponed till after consideration of government business order of the day  
no. 1 (Fair Work Bill 2008).

Question put and passed.

#### 44 FAIR WORK BILL 2008

Order of the day 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, as amended—and of the amendments moved by  
*Senator Siewert (see entry no. 30).*

Debate resumed.

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

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

Clause 65, page 76 (lines 5 to 8), omit subclause (1), substitute:

- (1) An employee who is a parent, or has responsibility for the care, of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child:
  - (a) is under school age; or
  - (b) is under 18 and has a disability.

Senator Siewert moved the following amendment:

Clause 76, page 89 (after line 9), after subclause (5), insert:

- (5A) If the employer refuses the request, the employee may apply to FWA to review the employer's decision on the following grounds:
  - (a) because there has been a contravention of a requirement of this section; or
  - (b) because there has been a misunderstanding or misapplication of a fact relating to the application.
- (5B) The application must be made within 7 days after the employer gives the employee a written response under subsection (3), unless FWA is satisfied there are circumstances which justify a late application.
- (5C) FWA may make:
  - (a) an order for reconsideration of the request; and
  - (b) an award of compensation to be paid by the employer to the employee.
- (5D) The amount of compensation must be an amount, not exceeding 26 weeks' pay for the employee, as FWA considers fair in all the circumstances.

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

Bill, as amended, further debated.

Senator Siewert moved the following amendment:

Page 118 (after line 28), at the end of Division 10, add:

**116A Compensation for public holiday**

- (1) Where an employee works on a public holiday, the employee is entitled to the additional compensation provided for in the modern award that covers the employee.
- (2) To avoid doubt, an enterprise agreement or individual flexibility arrangement cannot alter the entitlement to compensation in subsection (1).

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Clause 119, page 121 (line 2), omit "The", substitute "Subject to subsection (3), the".

Clause 119, page 121 (before line 7), at the end of the clause, add:

- (3) If, immediately before the time of the termination, or at the time when the person was given notice of the termination as described in subsection 117(1) (whichever happened first), the employer is a small business employer, the amount of the redundancy pay equals the total amount payable to the employee for the redundancy pay period worked out using the following table at the employee's base rate of pay for his or her ordinary hours of work:

<b>Redundancy pay period</b>		
	<b>Employee's period of continuous service with the employer on termination</b>	<b>Redundancy pay period</b>
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years	8 weeks

Clause 121, page 122 (line 11), omit paragraph (b).

Debate ensued.

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

Senator Siewert moved the following amendment:

Clause 123, page 123 (line 31), after “casual employee”, insert “, except a long-term casual employee”.

Debate ensued.

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

Senator Abetz moved the following amendment:

Clause 139, page 136 (line 14), after “superannuation”, insert “, but ensuring employers can nominate any complying superannuation fund as the default fund”.

Debate ensued.

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

On the motion of the Minister for Human Services (Senator Ludwig) the following amendment was debated and agreed to:

Clause 12, page 19 (line 8), omit “means redundancy”, substitute “means redundancy or termination payment”.

Senator Ludwig moved the following amendment:

Page 137 (after line 3), after clause 140, insert:

**140A Terms for long distance transport employees**

A modern award may include terms relating to the conditions under which an employer may employ employees to undertake long distance transport work.

Debate ensued.

Senator Ludwig moved—That the committee report progress and ask leave to sit again.

Question put and passed.

The Acting Deputy President (Senator Crossin) resumed the chair and the Temporary Chair of Committees reported that the committee had considered the bill, made progress and asked leave to sit again.

Ordered, on the motion of Senator Ludwig, that the committee have leave to sit again at a later hour.

#### 45 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 4 OF 2009

The Chair of the Selection of Bills Committee (Senator O'Brien), by leave, tabled the following report:

##### SELECTION OF BILLS COMMITTEE REPORT NO. 4 OF 2009

1. The committee met in private session on Thursday, 19 March 2009 at 1.01 pm.
2. The committee resolved to recommend—That—
  - (a) the order of the Senate of 18 March 2009 adopting the committee's 3rd report of 2009 be varied to provide that the Australian Business Investment Partnership Bill 2009 and a **related bill** be *referred immediately* to the Economics Committee for inquiry and report by 7 May 2009;
  - (b) the *provisions* of the Evidence Amendment (Journalists' Privilege) Bill 2009 be *referred immediately* to the Legal and Constitutional Affairs Committee for inquiry and report by 7 May 2009;
  - (c) the *provisions* of the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 be *referred immediately* to the Education, Employment and Workplace Relations Committee for inquiry and report by 7 May 2009;
  - (d) the *provisions* of the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009 be *referred immediately* to the Community Affairs Committee for inquiry and report by 7 May 2009;
  - (e) the *provisions* of the Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Bill 2009 be *referred immediately* to the Economics Committee for inquiry and report by 7 May 2009;
  - (f) the *provisions* of the Law and Justice (Cross Border and Other Amendments) Bill 2009 be *referred immediately* to the Legal and Constitutional Affairs Committee for inquiry and report by 7 May 2009;
  - (g) the *provisions* of the National Greenhouse and Energy Reporting Amendment Bill 2009 be *referred immediately* to the Finance and Public Administration Committee for inquiry and report by 7 May 2009;
  - (h) the *provisions* of the Native Title Amendment Bill 2009 be *referred immediately* to the Legal and Constitutional Affairs Committee for inquiry and report by 7 May 2009;

- (i) the *provisions* of the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 be *referred immediately* to the Community Affairs Committee for inquiry and report by 7 May 2009; and
  - (j) the *provisions* of the Tax Laws Amendment (2009 Measures No. 2) Bill 2009 be *referred immediately* to the Economics Committee for inquiry and report by 7 May 2009.
3. The committee resolved to recommend—That the following bills *not* be referred to committees:
- Defence Legislation Amendment Bill (No. 1) 2009
  - Fuel Quality Standards Amendment Bill 2009
  - Higher Education Support Amendment (VET FEE-HELP and Providers) Bill 2009
  - International Tax Agreements Amendment Bill (No. 1) 2009
  - Migration Amendment (Abolishing Detention Debt) Bill 2009
  - Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009
  - Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2009
  - Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009
  - Therapeutic Goods Amendment (2009 Measures No. 1) Bill 2009.

*The committee recommends accordingly.*

4. The committee deferred consideration of the following bills to its next meeting:
- Food Safety (Trans Fats) Bill 2009
  - International Monetary Agreements Amendment Bill 2009.

Kerry O'Brien  
Chair  
19 March 2009.

Senator O'Brien moved—That the report be adopted.

Question put and passed.

**46 LEGAL AND CONSTITUTIONAL AFFAIRS—STANDING COMMITTEE—REPORT—  
EXPOSURE DRAFT OF THE PERSONAL PROPERTY SECURITIES BILL 2008**

Senator O'Brien, at the request of the Chair of the Legal and Constitutional Affairs Committee (Senator Crossin), tabled the following report and documents:

Legal and Constitutional Affairs—Standing Committee—Exposure draft of the Personal Property Securities Bill 2008—Report, dated March 2009, Hansard record of proceedings, additional information and submissions.

Report ordered to be printed on the motion of Senator O'Brien.

Senator O'Brien, by leave, moved—That the Senate take note of the report.

Debate adjourned till the next day of sitting, Senator O'Brien in continuation.

**47 FAIR WORK BILL 2008**

Order of the day 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, as amended—and of the amendment moved by the Minister for Human Services (Senator Ludwig) (see entry no. 44).

Debate resumed.

Question—That the amendment be agreed to—put.

The committee divided—

**AYES, 28**

Senators—

Bilyk	Farrell	Ludwig	O'Brien (Teller)
Bishop	Feeney	Lundy	Polley
Brown, Bob	Forshaw	Marshall	Pratt
Brown, Carol	Furner	McEwen	Siewert
Cameron	Hanson-Young	McLucas	Stephens
Collins	Hutchins	Milne	Sterle
Crossin	Ludlam	Moore	Wortley

**NOES, 30**

Senators—

Abetz	Cash	Heffernan	Ronaldson
Back	Colbeck	Humphries	Ryan
Barnett	Eggleston	Johnston	Scullion
Bernardi	Ferguson	Kroger	Troeth
Birmingham	Fielding	Mason	Williams
Boyce	Fierravanti-Wells	McGauran	Xenophon
Brandis	Fifield	Minchin	
Bushby	Fisher	Parry (Teller)	

Question negatived.

Senator Ludwig moved the following amendment:

Page 142 (after line 8), after clause 145, insert:

**145A Terms about consultation and representation**

Without limiting paragraph 139(1)(j), a modern award must include a term that:

- (a) requires an employer to whom the award applies to consult the employer's employees to whom the award applies about major workplace changes that are likely to have a significant effect on the employees; and
- (b) allows for the representation of those employees for the purposes of that consultation.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 29

Senators—

Bilyk	Feeney	Marshall	Siewert
Bishop	Forshaw	McEwen (Teller)	Stephens
Brown, Bob	Furner	McLucas	Sterle
Brown, Carol	Hanson-Young	Milne	Wortley
Cameron	Hutchins	Moore	Xenophon
Collins	Ludlam	O'Brien	
Crossin	Ludwig	Polley	
Farrell	Lundy	Pratt	

NOES, 29

Senators—

Abetz	Cash	Heffernan	Ronaldson
Back	Colbeck	Humphries	Ryan
Barnett	Coonan	Johnston	Scullion
Bernardi	Eggleston	Kroger	Troeth
Birmingham	Ferguson	Mason	Williams (Teller)
Boyce	Fielding	McGauran	
Brandis	Fierravanti-Wells	Minchin	
Bushby	Fifield	Parry	

The ayes and noes were equal and so the question was negatived.

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

Clause 154, page 144 (line 27), omit paragraph (1)(b), substitute:

(b) are expressed to operate in one or more, but not every, State and Territory.

Clause 287, page 257 (line 21) to page 258 (line 4), omit the clause, substitute:

**287 When national minimum wage orders come into operation etc.**

*Orders come into operation on 1 July*

- (1) A national minimum wage order that is made in an annual wage review comes into operation on 1 July in the next financial year (the *year of operation*).

*Setting of different wages or loadings only permitted in exceptional circumstances*

- (2) The national minimum wage or the casual loading for award/agreement free employees set by the order must be the same for all employees, unless:
- FWA is satisfied that there are exceptional circumstances justifying setting different wages or loadings; and
  - the setting of different wages or loadings is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.
- (3) A special national minimum wage set by the order for a specified class of employees must be the same for all employees in that class, unless:
- FWA is satisfied that there are exceptional circumstances justifying setting different wages; and

- (b) the setting of different wages is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.

*Adjustments taking effect during year of operation only permitted in exceptional circumstances*

- (4) The order may provide that an adjustment of the national minimum wage, the casual loading for award/agreement free employees, or a special national minimum wage, set by the order takes effect (whether for some or all employees to whom that wage or loading applies) on a specified day in the year of operation that is later than 1 July, but only if:
  - (a) FWA is satisfied that there are exceptional circumstances justifying the adjustment taking effect on that day; and
  - (b) the adjustment is limited just to the particular situation to which the exceptional circumstances relate.

*When orders take effect*

- (5) The order takes effect in relation to a particular employee from the start of the employee's first full pay period that starts on or after 1 July in the year of operation. However, an adjustment referred to in subsection (4) takes effect in relation to a particular employee from the start of the employee's first full pay period that starts on or after the day specified as referred to in that subsection.

Clause 289, page 258 (line 27) to page 259 (line 2), omit subclauses (2) and (3), substitute:

- (2) FWA must publish all submissions made to FWA for consideration in the review.
- (3) However, if a submission made by a person or body includes information that is claimed by the person or body to be confidential or commercially sensitive, and FWA is satisfied that the information is confidential or commercially sensitive, FWA:
  - (a) may decide not to publish the information; and
  - (b) may instead publish:
    - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or
    - (ii) if FWA considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.
- (4) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).
- (5) FWA must ensure that all persons and bodies have a reasonable opportunity to make comments to FWA, for consideration in the review, on the material published under subsections (2) and (3).

- (6) The publishing of material under subsections (2) and (3) may be on FWA's website or by any other means that FWA considers appropriate.

Clause 306, page 266 (lines 29 and 30), omit all the words from and including "to the extent" to and including "equal remuneration order", substitute "in relation to an employee to the extent that it is less beneficial to the employee than a term of an equal remuneration order that applies to the employee".

Clause 324, page 282 (line 2), before "An", insert "(1)".

Clause 324, page 282 (after line 22), at the end of the clause, add:

- (2) An authorisation for the purposes of paragraph (1)(a):
- (a) must specify the amount of the deduction; and
  - (b) may be withdrawn in writing by the employee at any time.
- (3) Any variation in the amount of the deduction must be authorised in writing by the employee.

Clause 326, page 283 (line 6), omit "the", substitute "an".

Clause 326, page 283 (lines 10 to 12), omit all the words from and including "the deduction" to the end of subclause (1), substitute:

either of the following apply:

- (c) the deduction or payment is:
- (i) directly or indirectly for the benefit of the employer, or a party related to the employer; and
  - (ii) unreasonable in the circumstances;
- (d) if the employee is under 18—the deduction or payment is not agreed to in writing by a parent or guardian of the employee.

Clause 333, page 289 (line 9), omit "The", substitute "(1) Subject to this section, the".

Clause 333, page 289 (after line 10), at the end of the clause, add:

- (2) A regulation made for the purposes of subsection (1) has no effect to the extent that it would have the effect of reducing the amount of the high income threshold.
- (3) If:
- (a) in prescribing a manner in which the high income threshold is worked out, regulations made for the purposes of subsection (1) specify a particular matter or state of affairs; and
  - (b) as a result of a change in the matter or state of affairs, the amount of the high income threshold worked out in that manner would, but for this subsection, be less than it was on the last occasion on which this subsection did not apply;

the **high income threshold** is the amount that it would be if the change had not occurred.

Page 289 (after line 10), at the end of Division 3, add:

**333A Prospective employees**

If:

- (a) an employer, or a person who may become an employer, gives to another person an undertaking that would have been a guarantee of annual earnings if the other person had been the employer's or person's employee; and
- (b) the other person subsequently becomes the employer's or person's employee; and
- (c) the undertaking relates to the work that the other person performs for the employer or person;

this Division applies in relation to the undertaking, after the other person becomes the employer's or person's employee, as if the other person had been the employer's or person's employee at the time the undertaking was given.

Senator Abetz moved the following amendments together by leave:

Clause 23, page 41 (line 31), omit "15 employees", substitute "25 employees".

Clause 23, page 42 (line 5), at the end of subclause (2), add:

- ; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and
- (d) the regulations must prescribe a method for the calculation of *full-time equivalent positions* for the purposes of this section.

Clause 121, page 122 (line 5), omit "Section", substitute "(1) Section".

Clause 121, page 122 (after line 11), at the end of the clause, add:

- (2) Subsection 23(1) has effect in relation to this section as if it were modified by omitting "25 employees" and substituting "15 employees".
- (3) Subsection 23(2) has effect in relation to this section as if it were modified by omitting paragraphs (c) and (d).

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 29

Senators—

Abetz	Cash	Heffernan	Ronaldson
Back	Colbeck	Humphries	Ryan
Barnett	Coonan	Johnston	Scullion
Bernardi	Eggleston	Kroger	Troeth
Birmingham	Ferguson	Mason	Williams (Teller)
Boyce	Fierravanti-Wells	McGauran	
Brandis	Fifield	Minchin	
Bushby	Fisher	Parry	

## NOES, 31

Senators—

Arbib	Farrell (Teller)	Ludwig	Polley
Bilyk	Feeney	Lundy	Pratt
Bishop	Fielding	Marshall	Siewert
Brown, Bob	Forshaw	McEwen	Stephens
Brown, Carol	Furner	McLucas	Sterle
Cameron	Hanson-Young	Milne	Wortley
Collins	Hutchins	Moore	Xenophon
Evans	Ludlam	O'Brien	

Question negatived.

The Leader of the Family First Party (Senator Fielding) moved the following amendments together by leave:

Clause 23, page 41 (line 31), omit “15 employees”, substitute “20 employees”.

Clause 23, page 42 (line 5), at the end of subclause (2), add:

- ; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and
- (d) the regulations must prescribe a method for the calculation of *full-time equivalent positions* for the purposes of this section.

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

Senator Xenophon moved the following amendments together by leave:

Clause 23, page 41 (line 31), omit “15 employees”, substitute “20 employees”.

Clause 23, page 42 (line 5), at the end of subclause (2), add:

- ; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and
- (d) the regulations must prescribe a method for the calculation of *full-time equivalent positions* for the purposes of this section.

Clause 121, page 122 (line 5), before “Section”, insert “(1)”.

Clause 121, page 122 (after line 11), at the end of the clause, add:

- (2) Subsection 23(1) has effect in relation to this section as if it were modified by omitting “20 employees” and substituting “15 employees”.
- (3) Subsection 23(2) has effect in relation to this section as if it were modified by omitting paragraphs (c) and (d).

Question—That the amendments be agreed to—put.

The committee divided—

## AYES, 31

Senators—

Abetz	Cash	Fisher	Parry
Back	Colbeck	Heffernan	Ronaldson
Barnett	Coonan	Humphries	Ryan
Bernardi	Eggleston	Johnston	Scullion
Birmingham	Ferguson	Kroger	Troeth
Boyce	Fielding	Mason	Williams (Teller)
Brandis	Fierravanti-Wells	McGauran	Xenophon
Bushby	Fifield	Minchin	

## NOES, 29

Senators—

Arbib	Farrell (Teller)	Lundy	Pratt
Bilyk	Feeney	Marshall	Siewert
Bishop	Forshaw	McEwen	Stephens
Brown, Bob	Furner	McLucas	Sterle
Brown, Carol	Hanson-Young	Milne	Wortley
Cameron	Hutchins	Moore	
Collins	Ludlam	O'Brien	
Evans	Ludwig	Polley	

Question agreed to.

Senator Fielding moved the following amendments together by leave:

Clause 479, page 390 (line 23), after “ordinary meanings”, insert “subject to section 480A”.

Page 391 (after line 9), at the end of Division 1, add:

**480A Application of this Part**

- (1) This Part, other than Subdivision B of Division 2 and any provisions relating to that subdivision, does not apply in relation to small business employers or their employees.
- (2) In this Part:
  - member of the permit holder’s organisation* does not include an employee of a small business employer.
  - premises* does not include premises occupied by a small business employer.
- (3) Nothing in this Part authorises a permit holder to enter premises occupied by a small business employer.

Debate ensued.

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

Senator Fielding moved the following amendments together by leave:

Clause 487, page 396 (lines 11 and 12), omit “24 hours”, substitute “72 hours”.

Clause 495, page 400 (line 30), omit “24 hours”, substitute “72 hours”.

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

Senator Abetz moved the following amendment:

Clause 484, page 394 (lines 20 to 25), omit the clause, substitute:

**484 Entry to hold discussions**

- (1) Subject to subsections (2) and (3), a permit holder may enter premises to hold discussions with one or more persons:
  - (a) who perform work on the premises; and
  - (b) whose industrial interests the permit holder’s organisation is entitled to represent; and
  - (c) who wish to participate in those discussions.
- (2) If each person mentioned in subsection (1) is a member of the permit holder’s organisation—the requirements of this section are satisfied.

- (3) If any of the persons mentioned in subsection (1) is not a member of the permit holder's organisation, the permit holder must not enter the premises for the purpose of holding discussions with such persons, and must not hold discussions with such persons if otherwise authorised to enter the premises, unless:
  - (a) the occupier of the premises authorises the permit holder, in writing, to do so; or
  - (b) the majority of persons who perform work on the premises agree that the permit holder may do so, and that agreement is communicated to the permit holder, in writing, by the occupier of the premises; or
  - (c) the permit holder obtains a majority support entry determination.

**484A Majority support entry determinations**

- (1) A permit holder may apply to FWA for a determination (a *majority support entry determination*) that a majority of persons who perform work on the premises support the entry of the permit holder to hold discussions.
- (2) The application must:
  - (a) specify that the permit held by the applicant is valid; and
  - (b) specify that the permit holder's organisation is entitled to represent the industrial interests of one or more persons with whom discussions are sought; and
  - (c) contain a declaration that the permit holder has requested, but not obtained, the express authorisation of the occupier of the premises; and
  - (d) be made in accordance with the regulations.

**484B When FWA must make a majority support entry determination**

- (1) If a permit holder has applied for a majority entry support determination under section 484A, FWA must make the determination if it is satisfied that:
  - (a) a majority of persons who perform work on the premises genuinely authorise the permit holder to enter and hold discussions; and
  - (b) the permit holder's organisation is entitled to represent the industrial interests of the employees with whom discussions are sought; and
  - (c) the historical coverage and representation by employee organisations of persons at the premises will not be disturbed.
- (2) For the purposes of paragraph (1)(a), FWA may work out whether a majority of employees authorise the permit holder to enter and hold discussions using any method that FWA considers appropriate.
- (3) For the purposes of paragraph (1)(c), FWA must have regard to:
  - (a) the industrial instrument or instruments covering the employees at the premises to which entry is sought; and
  - (b) the history of enterprise agreement making at the premises to which entry is sought; and
  - (c) the rules of the permit holder's organisation.

Debate ensued.

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

Senator Fielding moved the following amendments together by leave:

Clause 482, page 393 (line 1), before “require”, insert “subject to subsection (1A),”.

Clause 482, page 393 (after line 10), after subclause (1), insert:

*Permit holder must not access non-member records*

- (1A) The permit holder may not require, inspect, or make copies of any employee record (however described) of an employee who is not a member of the permit holder’s organisation, except with the written consent of the employee.

Clause 483, page 393 (line 25), omit “The”, substitute “Subject to subsections (1A) and (1B), the”.

Clause 483, page 393 (after line 28), after subclause (1), insert:

*Conditions relating to non-member records*

- (1A) The permit holder may not require, inspect or make copies of any employee record (however described) of an employee who is not a member of the permit holder’s organisation, except with the written consent of the employee.
- (1B) If the record or document is an employee record (however described) of an employee who is not a member of the permit holder’s organisation, the permit holder may apply to FWA for an order requiring the affected employer to provide a copy of the record or document to FWA.
- (1C) FWA may make any order it thinks appropriate in relation to an application made under subsection (1B).
- (1D) If FWA orders under subsection (1B) that the affected employer must provide a copy of a record or document:
- (a) the affected employer must provide a copy of the record or document to FWA within the period specified in the order; and
  - (b) FWA must determine whether, and in what form, to provide the permit holder access to information contained in that record or document.

Clause 494, page 400 (after line 22), at the end of the clause, add:

*Permit holder must not access non-member records*

- (4) The permit holder may not require, inspect or make copies of any employee record (however described) of an employee who is not a member of the permit holder’s organisation, except with the written consent of the employee.

Debate ensued.

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

Senator Abetz moved the following amendments together by leave:

- Clause 482, page 393 (after line 6), at the end of subclause (1), add:
- ; (d) paragraph (c) does not apply in relation to any record or document pertaining to any person who is not a member of the permit holder's organisation, unless:
    - (i) the person provides consent in writing to the occupier or affected employer; or
    - (ii) the permit holder has obtained an order pursuant to paragraph 483A(1)(a).

Clause 483, page 393 (after line 28), after subclause (1), insert:

- (1A) Subclause (1) does not apply in relation to any record or document pertaining to any person who is not a member of the permit holder's organisation, unless:
  - (a) the person provides consent in writing to the affected employer; or
  - (b) the permit holder has obtained an order pursuant to paragraph 483A(1)(b).

Page 394 (after line 17), at the end of Subdivision A, add:

**483A Application to FWA for access to non-member records**

- (1) The permit holder may, for the purposes of investigating the suspected contravention, apply to FWA for either or both of the following orders:
  - (a) an order to allow the permit holder to enter the premises and to inspect, and make copies of, any record or document pertaining to a person who is not a member of the permit holder's organisation that is relevant to the suspected contravention;
  - (b) an order to require an affected employer to produce, or provide access to, such records for inspection.
- (2) FWA may make such an order if it is satisfied that the order is necessary to the investigation of the suspected breach. Before doing so, FWA must have regard to the conditions (if any) that apply to the permit holder's permit.
- (3) An application for an order under this section:
  - (a) must be in accordance with the regulations; and
  - (b) must set out the grounds on which the application is made.

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

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

Clause 12, page 21 (after line 26), after the definition of *non-excluded matters*, insert:

*non-member record or document*: see subsection 482(2A).

Clause 482, page 393 (line 3), after "document", insert "(other than a non-member record or document)".

Clause 482, page 393 (after line 18), after subclause (2), insert:

*Meaning of non-member record or document*

- (2A) A **non-member record or document** is a record or document that:
- (a) relates to the employment of a person who is not a member of the permit holder's organisation; and
  - (b) does not also substantially relate to the employment of a person who is a member of the permit holder's organisation;
- but does not include a record or document that relates only to a person or persons who are not members of the permit holder's organisation if the person or persons have consented in writing to the record or document being inspected or copied by the permit holder.

Clause 483, page 393 (line 26), after "document", insert "(other than a non-member record or document)".

Page 394 (after line 17), after clause 483, insert:

**483AA Application to FWA for access to non-member records**

- (1) The permit holder may apply to FWA for an order allowing the permit holder to do either or both of the following:
  - (a) require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, specified non-member records or documents (or parts of such records or documents) under paragraph 482(1)(c);
  - (b) require an affected employer to produce, or provide access to, specified non-member records or documents (or parts of such records or documents) under subsection 483(1).
- (2) FWA may make the order if it is satisfied that the order is necessary to investigate the suspected contravention. Before doing so, FWA must have regard to any conditions imposed on the permit holder's entry permit.
- (3) If FWA makes the order, this Subdivision has effect accordingly.
- (4) An application for an order under this section:
  - (a) must be in accordance with the regulations; and
  - (b) must set out the reason for the application.

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

Clause 481, page 392 (after line 22), at the end of the clause, add:

Note: A permit holder who seeks to exercise rights under this Part without reasonably suspecting that a contravention has occurred, or is occurring, is liable to be penalised under subsection 503(1) (which deals with misrepresentations about things authorised by this Part).

Clause 508, page 406 (lines 18 to 25), omit subclause (4), substitute:

- (4) Without limiting subsection (1), an official misuses rights exercisable under this Part if:
  - (a) the official exercises those rights repeatedly with the intention or with the effect of hindering, obstructing or otherwise harassing an occupier or employer; or

- (b) in exercising a right under Subdivision B of Division 2 of this Part, the official encourages a person to become a member of an organisation and does so in a way that is unduly disruptive:
  - (i) because the exercise of the right is excessive in the circumstances; or
  - (ii) for some other reason.

Senator Siewert moved the following amendment:

Clause 492, page 398 (after line 20), after subclause (2), insert:

- (2A) Without limiting when a request under subsection (1) might otherwise be unreasonable, similar considerations to those set out in paragraph (2)(b) apply in determining whether a request under paragraph (1)(b) is unreasonable.

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

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Siewert, in respect of clauses 494 to 499, and 508 and 509.

Clauses 494 and 495, as amended, and clauses 496 to 499, and 508 and 509 agreed to.

Senator Ludwig moved the following amendments together by leave:

No. 1—Clause 12, page 10 (after line 15), after paragraph (a) of the definition of *affected employer*, insert:

- (aa) in relation to an entry under section 483A other than a designated outworker terms entry: see paragraph 483B(3)(a); and
- (ab) in relation to a designated outworker terms entry under section 483A: see paragraph 483B(3)(b); and

No. 2—Clause 12, page 10 (line 17), omit “subsection 495(2)”, substitute “paragraph 495(2)(a)”.

No. 3—Clause 12, page 10 (line 17), at the end of the definition of *affected employer*, add:

- ; and (c) in relation to a State or Territory OHS right to inspect or otherwise access an employee record: see paragraph 495(2)(b).

No. 4—Clause 12, page 14 (before line 3), before the definition of *discriminatory term*, insert:

*designated outworker terms entry*: see subsection 483A(5).

No. 5—Clause 12, page 28 (after line 20), after the definition of *step-child*, insert:

*TCF award* means an instrument prescribed by the regulations for the purposes of this definition.

No. 6—Clause 12, page 28 (before line 21), before the definition of *termination of industrial action instrument*, insert:

*TCF outworker* means an outworker in the textile, clothing or footwear industry whose work is covered by a TCF award.

No. 7—Clause 478, page 390 (line 10), after “instruments.”, insert “The Division makes special provision in relation to TCF outworkers.”.

No. 8—Clause 478, page 390 (line 12), after “employees”, insert “and TCF outworkers”.

No. 9—Clause 480, page 391 (line 6), after “employees”, insert “and TCF outworkers”.

- No. 10—Clause 482, page 393 (line 3), before “relevant”, insert “that is directly”.
- No. 11—Clause 482, page 393 (line 3), after “contravention”, insert “and”.
- No. 12—Clause 482, page 393 (lines 7 to 10), omit the note, substitute:
- Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).
- Note 2: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.
- No. 13—Clause 482, page 393 (after line 10), after subclause (1), insert:
- (1A) However, an occupier or affected employer is not required under paragraph (1)(c) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.
- No. 14—Clause 483, page 393 (line 27), before “relevant”, insert “that is directly”.
- No. 15—Clause 483, page 393 (after line 28), after subclause (1), insert:
- (1A) However, an affected employer is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.
- No. 16—Clause 483, page 394 (lines 14 to 17), omit the note, substitute:
- Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).
- Note 2: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.
- No. 17—Page 394 (before line 18), before Subdivision B, insert:

**Subdivision AA—Entry to investigate suspected contravention relating to TCF outworkers**

**483A Entry to investigate suspected contravention relating to TCF outworkers**

- (1) A permit holder may enter premises and exercise a right under section 483B or 483C for the purpose of investigating a suspected contravention of:
- (a) this Act, or a term of a fair work instrument, that relates to, or affects, a TCF outworker:
- (i) whose industrial interests the permit holder’s organisation is entitled to represent; and
- (ii) who performs work on the premises; or
- (b) a designated outworker term that is in an instrument that relates to TCF outworkers whose industrial interests the permit holder’s organisation is entitled to represent.
- Note: Particulars of the suspected contravention must be specified in an entry notice, unless the entry is a designated outworker terms entry (see subsection 518(2)).
- (2) The permit holder must reasonably suspect that the contravention has occurred, or is occurring.
- (3) The burden of proving that the suspicion is reasonable lies on the person asserting that fact.

- (4) Subsections (2) and (3) do not apply in relation to a designated outworker terms entry.
- (5) A *designated outworker terms entry* is an entry under paragraph (1)(b) for the purpose of investigating a suspected contravention of a designated outworker term.

#### **483B Rights that may be exercised while on premises**

##### *Rights that may be exercised while on premises*

- (1) While on the premises, the permit holder may do the following:
  - (a) inspect any work, process or object relevant to the suspected contravention;
  - (b) interview any person about the suspected contravention:
    - (i) who agrees to be interviewed; and
    - (ii) whose industrial interests the permit holder's organisation is entitled to represent;
  - (c) require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, any record or document that is directly relevant to the suspected contravention and that:
    - (i) is kept on the premises; or
    - (ii) is accessible from a computer that is kept on the premises.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.

- (2) However, an occupier or affected employer is not required under paragraph (1)(c) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

##### *Meaning of affected employer*

- (3) A person is an *affected employer*:
  - (a) in relation to an entry onto premises under section 483A other than a designated outworker terms entry, if:
    - (i) the person employs a TCF outworker whose industrial interests the permit holder's organisation is entitled to represent; and
    - (ii) the TCF outworker performs work on the premises; and
    - (iii) the suspected contravention relates to, or affects, the TCF outworker; or
  - (b) in relation to a designated outworker terms entry under section 483A, if the person is covered by a TCF award.

##### *Occupier and affected employer must not contravene requirement*

- (4) An occupier or affected employer must not contravene a requirement under paragraph (1)(c).

Note: This subsection is a civil remedy provision (see Part 4-1).

**483C Later access to record or document***Later access to record or document*

- (1) The permit holder may, by written notice, require the occupier or an affected employer to produce, or provide access to, a record or document that is directly relevant to the suspected contravention on a later day or days specified in the notice.
- (2) However, an occupier or affected employer is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

*Other rules relating to notices*

- (3) The day or days specified in the notice must not be earlier than 14 days after the notice is given.
- (4) The notice may be given:
  - (a) while the permit holder is on the premises; or
  - (b) within 5 days after the entry.

*Occupier and affected employer must not contravene requirement*

- (5) An occupier or affected employer must not contravene a requirement under subsection (1).

Note: This subsection is a civil remedy provision (see Part 4-1).

*Where record or document may be inspected or copied*

- (6) The permit holder may inspect, and make copies of, the record or document at:
  - (a) the premises; or
  - (b) if another place is agreed upon by the permit holder and the occupier or affected employer—that other place.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.

**483D Entry onto other premises to access records and documents**

- (1) A permit holder who may enter premises under paragraph 483A(1)(a) for the purpose of investigating a suspected contravention may enter other premises and exercise a right under subsection (2) or section 483E if the permit holder reasonably suspects that records or documents that are directly relevant to the suspected contravention:
  - (a) are kept on the other premises; or
  - (b) are accessible from a computer that is kept on the other premises.

Note: Particulars of the suspected contravention must be specified in an entry notice (see subsection 518(2)).

*Rights that may be exercised while on premises*

- (2) While on the other premises, the permit holder may require the occupier to allow the permit holder to inspect, and make copies of, any such record or document.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.

- (3) However, an occupier is not required under subsection (2) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

*Occupier must not contravene requirement*

- (4) An occupier must not contravene a requirement under subsection (2).

Note: This subsection is a civil remedy provision (see Part 4-1).

#### **483E Later access to record or document—other premises**

*Later access to record or document*

- (1) The permit holder may, by written notice, require the occupier of the other premises to produce, or provide access to, a record or document that is directly relevant to the suspected contravention on a later day or days specified in the notice.
- (2) However, an occupier is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

*Other rules relating to notices*

- (3) The day or days specified in the notice must not be earlier than 14 days after the notice is given.
- (4) The notice may be given:
- (a) while the permit holder is on the other premises; or
  - (b) within 5 days after the entry.

*Occupier must not contravene requirement*

- (5) An occupier must not contravene a requirement under subsection (1).

Note: This subsection is a civil remedy provision (see Part 4-1).

*Where record or document may be inspected or copied*

- (6) The permit holder may inspect, and make copies of, the record or document at:
- (a) the other premises; or
  - (b) if another place is agreed upon by the permit holder and the occupier—that other place.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.

No. 18—Clause 484, page 394 (line 20), omit “to hold”, substitute “for the purposes of holding”.

No. 19—Clause 484, page 394 (line 21), omit “persons”, substitute “employees or TCF outworkers”.

No. 20—Clause 486, page 395 (line 27), omit “Neither Subdivision A nor B authorises”, substitute “Subdivisions A, AA and B do not authorise”.

No. 21—Clause 487, page 396 (after line 1), before subclause (1), insert:

*Entry under Subdivision A or B*

No. 22—Clause 487, page 396 (line 11), after “notice”, insert “for an entry under Subdivision A or B”.

No. 23—Clause 487, page 396 (after line 20), at the end of the clause, add:

*Entry under Subdivision AA*

- (5) If the permit holder enters premises under Subdivision AA, the permit holder must, either before or as soon as practicable after entering the premises, give an entry notice for the entry to the occupier of the premises or another person who apparently represents the occupier if the occupier or other person is present at the premises.

No. 24—Clause 489, page 396 (line 25), after “A”, insert “or AA”.

No. 25—Clause 489, page 396 (lines 30 and 31), omit “under paragraph 482(1)(c) or subsection 483(1)”, substitute “under:

- (i) paragraph 482(1)(c) or 483B(1)(c), or subsection 483D(2); or  
 (ii) subsection 483(1), 483C(1) or 483E(1)”.

No. 26—Clause 489, page 397 (lines 1 to 3), omit the note, substitute:

Note: Paragraphs 482(1)(c) and 483B(1)(c) and subsection 483D(2) deal with access to records and documents while the permit holder is on the premises. Subsections 483(1), 483C(1) and 483E(1) deal with access to records and documents at later times.

No. 27—Clause 489, page 397 (line 7), omit “A”, substitute “A, AA”.

No. 28—Clause 490, page 397 (line 15), omit “A”, substitute “A, AA”.

No. 29—Clause 490, page 397 (line 19), omit “A”, substitute “A, AA”.

No. 30—Clause 495, page 401 (lines 2 to 4), omit subclause (2), substitute:

- (2) A person is an *affected employer*:
- (a) in relation to an entry onto premises in accordance with this Division—if one or more of the person’s employees perform work on the premises; and
- (b) in relation to a right to inspect or otherwise access an employee record in accordance with this Division—if the person employs the employee to whom the record relates.

No. 31—Clause 502, page 402 (line 18), omit “483(5)(b)”, substitute “483(5)(b), 483C(6)(b) or 483E(6)(b)”.

No. 32—Clause 504, page 403 (lines 3 to 14), omit the clause, substitute:

**504 Unauthorised use or disclosure of information or documents**

A person must not use or disclose information or a document obtained under section 482, 483, 483B, 483C, 483D or 483E in the investigation of a suspected contravention for a purpose that is not related to the investigation or rectifying the suspected contravention, unless:

- (a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent:
- (i) a serious and imminent threat to an individual’s life, health or safety; or

- (ii) a serious threat to public health or public safety; or
- (b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in reporting concerns to relevant persons or authorities; or
- (c) the use or disclosure is required or authorised by or under law; or
- (d) the person reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by, or on behalf of, an enforcement body (within the meaning of the *Privacy Act 1988*):
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
  - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
  - (iii) the protection of the public revenue;
  - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
  - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
- (e) if the information is, or the document contains, personal information (within the meaning of the *Privacy Act 1988*)—the use or disclosure is made with the consent of the individual to whom the information relates.

Note: This section is a civil remedy provision (see Part 4-1).

No. 33—Clause 510, page 407 (line 11), omit “subsection 504(1)”, substitute “section 504”.

No. 34—Clause 510, page 407 (lines 12 and 13), omit “employee records”, substitute “information or documents”.

No. 35—Clause 510, page 407 (lines 16 to 18), omit “an employee record of an employee obtained under section 482 or 483”, substitute “information or documents obtained under section 482, 483, 483B, 483C, 483D or 483E”.

No. 36—Clause 518, page 412 (lines 25 and 26), omit “481 (which deals with entry to investigate suspected contraventions)”, substitute “481, 483A or 483D”.

No. 37—Clause 518, page 413 (line 1), before “specify”, insert “unless the entry is a designated outworker terms entry under section 483A—”.

No. 38—Clause 518, page 413 (line 3), before “contain”, insert “for an entry under section 481—”.

No. 39—Clause 518, page 413 (after line 10), after paragraph (2)(c), insert:

- (ca) for an entry under section 483A other than a designated outworker terms entry—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of a TCF outworker, who performs work on the premises, and:

- (i) to whom the suspected contravention or contraventions relate; or
  - (ii) who is affected by the suspected contravention or contraventions; and
- (cb) for a designated outworker terms entry under section 483A—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of TCF outworkers; and
- (cc) for an entry under section 483D—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of a TCF outworker:
- (i) to whom the suspected contravention or contraventions relate; or
  - (ii) who is affected by the suspected contravention or contraventions; and

No. 40—Clause 518, page 413 (line 12), at the end of paragraph (2)(d), add “or TCF outworker”.

No. 41—Clause 518, page 413 (line 20), omit “a person”, substitute “an employee or TCF outworker”.

No. 42—Clause 518, page 413 (line 23), omit “person”, substitute “employee or TCF outworker”.

No. 43—Clause 539, page 435 (table item 25, column 1), after “483(4)”, insert:

- 483B(4)
- 483C(5)
- 483D(4)
- 483E(5)

No. 44—Clause 539, page 435 (table item 25, column 1), omit “504(1)”, substitute “504”.

Debate ensued.

Senator Ludwig moved—That the committee report progress and ask leave to sit again.

Question put and passed.

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The Acting Deputy President (Senator Humphries) resumed the chair and the Temporary Chair of Committees reported that the committee had considered the bill, made progress and asked leave to sit again.

Ordered, on the motion of Senator Ludwig, that the committee have leave to sit again at a later hour.

#### 48 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION

The Minister for Human Services (Senator Ludwig), by leave, moved—That the Senate continue to sit at midnight and the sitting of the Senate be suspended when the third reading the Fair Work Bill 2008 has been determined.

Question put and passed.

**49 FAIR WORK BILL 2008**

Order of the day 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, as amended—and of the amendments moved by the Minister for Human Services (Senator Ludwig) (see entry no. 47).

Debate resumed.

The question was divided—

Question—That amendments nos 1, 4 to 9, 17, 20 to 29, 31, 36 to 39, 42 and 43 be agreed to—put.

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*The Senate continued to sit till midnight—*

FRIDAY, 20 MARCH 2009 AM

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The committee divided—

AYES, 30

Senators—

Bilyk	Farrell	Ludlam	O'Brien
Bishop	Faulkner	Ludwig	Pratt
Brown, Bob	Feeny	Lundy	Siewert
Cameron	Fielding	Marshall	Sterle
Collins	Forshaw	McEwen (Teller)	Wortley
Conroy	Furner	McLucas	Xenophon
Crossin	Hanson-Young	Milne	
Evans	Hutchins	Moore	

NOES, 28

Senators—

Abetz	Bushby (Teller)	Fisher	Minchin
Back	Cash	Heffernan	Parry
Barnett	Colbeck	Humphries	Ronaldson
Bernardi	Coonan	Johnston	Ryan
Birmingham	Eggleston	Kroger	Scullion
Boyce	Fierravanti-Wells	Mason	Troeth
Brandis	Fifield	McGauran	Williams

Question agreed to.

Bill, as amended, further debated.

Question—That amendments nos 2, 3, 10 to 16, 18, 19, 30, 32 to 35, 40, 41 and 44 be agreed to—put and passed.

Senator Abetz moved the following amendments together by leave:

Clause 262, page 235 (after line 28), at the end of the clause, add:

*Genuine agreement*

- (6) FWA must be satisfied that the making of a determination is by consent of the bargaining representatives and that such consent was reached by genuine agreement.

Clause 269, page 241 (line 12), after paragraph (1)(c), insert:

and (d) the bargaining representatives have genuinely agreed to seek a workplace determination;

Debate ensued.

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

Senator Abetz moved the following amendment:

Clause 134, page 132 (after line 13), after paragraph (1)(d), insert:

(da) the requirement not to disadvantage employees; and

(db) the requirement not to increase costs for employers; and

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Page 60 (after line 16), at the end of Subdivision B, add:

**44A FWA may deal with a dispute about the application of National Employment Standards**

- (1) FWA may deal with a dispute about the application of National Employment Standards.
- (2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:
  - (a) an employee;
  - (b) an employer;
  - (c) an employee organisation;
  - (d) an employer organisation.
- (3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.
- (4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.

Page 60 (after line 23), after clause 45, insert:

**45A FWA may deal with a dispute about the application of modern award terms**

- (1) FWA may deal with a dispute about the application of a term of a modern award.
- (2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:
  - (a) an employee;
  - (b) an employer;
  - (c) an employee organisation;
  - (d) an employer organisation.
- (3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.
- (4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.

Page 64 (after line 9), after clause 50, insert:

**50A FWA may deal with a dispute about the application of enterprise agreement terms**

- (1) FWA may deal with a dispute about the application of a term of an enterprise agreement.
- (2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:
  - (a) an employee;
  - (b) an employer;
  - (c) an employee organisation;
  - (d) an employer organisation.
- (3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.
- (4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.

Clause 595, page 469 (lines 4 to 13), omit subclauses (2) and (3), substitute:

- (2) FWA may deal with a dispute as it considers appropriate, including in the following ways:
  - (a) by mediation or conciliation;
  - (b) by making a recommendation or expressing an opinion;
  - (c) by arbitration (including by making any orders it considers appropriate).

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Clause 139, page 136 (line 16), at the end of subclause (1), add:

- ; (k) exceptional matters where the circumstances of the industry or sector warrant such matters being included in the award.

Clause 143, page 140 (after line 4), after subclause (7), insert:

- (8) To avoid doubt, nothing in this section is intended to exclude from award coverage employees in new or emerging occupations that have not previously been covered by awards but whose work is of a character that would warrant modern award coverage.

Debate ensued.

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

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Siewert, in respect of clause 152.

Clause 152 agreed to.

Senator Siewert moved the following amendments together by leave:

Clause 144, page 140 (line 7), omit “must”, substitute “may”.

Clause 144, page 140 (after line 11), after subclause (1), insert:

- (1A) FWA is to include a flexibility term if it considers it appropriate for the industries or occupations covered by the award.

Clause 144, page 141 (after line 9), after subclause (4), insert:

*Individual flexibility arrangement must not be a condition of employment*

- (4A) The requirement for genuine agreement in paragraph (4)(b) includes a prohibition on an individual flexibility arrangement being put forward by the employer as a condition of employment.

Clause 201, page 187 (line 2), omit “taken”, substitute “agreed”.

Heading to Division 5, page 188 (line 2), omit the heading, substitute “**Division 5—Flexibility terms and consultation terms**”.

Heading to clause 202, page 188 (line 3), omit the heading, substitute “**202 Enterprise agreements may include a flexibility term**”.

Heading to subclause 202(1), page 188 (line 4), omit the heading, substitute “*Enterprise agreement may include a flexibility term*”.

Clause 202, page 188 (line 5), omit “must”, substitute “may”.

Clause 202, page 188 (lines 25 and 26), omit subclause (4), substitute:

- (4) An employee and employer may agree to include the model flexibility term in an enterprise agreement.

Clause 203, page 189 (after line 19), after subclause (3), insert:

*Individual flexibility arrangement must not be a condition of employment*

- (3A) The requirement for genuine agreement in subsection (3) includes a prohibition on an individual flexibility arrangement being put forward by the employer as a condition of employment.

Clause 265, page 237 (line 14), after “subsection 264(1)”, insert “and allowed by section 274A”.

Clause 268, page 240 (line 9), after “subsection 267(1)”, insert “and allowed by section 274A”.

Clause 271, page 243 (line 35), after “subsection 270(1)”, insert “and allowed by section 274A”.

Clause 273, page 245 (lines 18 to 23), omit subclause (4).

Page 246 (after line 25), after clause 274, insert:

**274A Workplace determination may include flexibility term**

- (1) A workplace determination may include a flexibility term that would, if the workplace determination were an enterprise agreement, satisfy paragraph 202(1)(a) and section 203 (which deal with flexibility terms in enterprise agreements).
- (2) FWA may decide to include the model flexibility term in the determination.

Note: The factors FWA must take into account in deciding terms of a workplace determination are set out in section 275.

Clause 144, page 141 (after line 13), at the end of the clause, add:

- (6) The employer must lodge with FWA a copy of any individual flexibility arrangement within 14 days of the arrangement being signed in accordance with paragraph (4)(e).

Note: This subsection is a civil remedy provision (see Part 4-1).

- (7) FWA must make publicly available on request copies of individual flexibility arrangements lodged in accordance with subsection (6), with information that would identify the parties to the arrangement removed.

Clause 203, page 190 (after line 19), at the end of the clause, add:

- (8) The employer must lodge with FWA a copy of any individual flexibility arrangement within 14 days of the arrangement being signed in accordance with paragraph (7)(a).

Note: This subsection is a civil remedy provision (see Part 4-1).

- (9) FWA must make publicly available on request copies of individual flexibility arrangements lodged in accordance with subsection (8), with information that would identify the parties to the arrangement removed.

Clause 539, page 429 (after table item 4), insert:

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**Part 2-3—Modern awards**

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4A	144(6)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
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Clause 539, page 430 (after table item 5), insert:

5A	203(8)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
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Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Clause 12, page 25 (line 13), omit “172(1)”, substitute “172(1A)”.

Clause 172, page 161 (lines 5 to 23), omit subclause (1), substitute:

*Enterprise agreements may be made about permitted matters*

- (1) An agreement (an *enterprise agreement*) that is about one or more permitted matters may be made in accordance with this Part.

Note: An employee organisation that was a bargaining representative for a proposed enterprise agreement will be covered by the agreement if the organisation notifies FWA under section 183 that it wants to be covered.

- (1A) All matters, other than matters which comprise unlawful terms, are *permitted matters*.

Clause 194, page 182 (lines 21 to 27), omit paragraph (c).

Clause 194, page 183 (lines 1 to 13), omit paragraphs (e) to (g).

Debate ensued.

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

Senator Siewert moved the following amendment:

Clause 180, page 170 (line 28), omit “7-day”, substitute “14-day”.

Debate ensued.

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

Senator Siewert moved the following amendment:

Clause 229, page 208 (lines 1 to 4), omit subclause (2).

Debate ensued.

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

The Leader of the Family First Party (Senator Fielding) moved the following amendment:

Page 219 (after line 25), after clause 241, insert:

**241A Application of this Division**

This Division does not apply in relation to small business employers or their employees.

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Clause 260, page 234 (after line 14), at the end of the clause, add:

- (6) For the purposes of paragraph (5)(c), an employer may be identified by a trading name, being a name that the employer trades under, or is known as by its employees, suppliers or customers.

Clause 262, page 235 (line 25), at the end of subclause (4), add:

- ; and (c) an improvement in the employment conditions of the employees.

Debate ensued.

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

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Siewert, in respect of clause 263.

Clause 263 agreed to.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Siewert, in respect of Division 3, clauses 328 to 333.

Division 3, clauses 328 to 333 debated and agreed to.

Senator Siewert moved the following amendments together by leave:

Clause 47, page 61 (lines 23 to 27), omit subclause (2).

Clause 332, page 288 (line 8), omit paragraph (1)(c).

Clause 332, page 288 (lines 20 to 26), omit subclause (3).

Clause 333, page 289 (lines 8 to 10), omit the clause, substitute:

**333 High income threshold**

- (1) The *high income threshold* is \$150,000, indexed in accordance with subsection (2).

- (2) The regulations must prescribe a method for the annual indexation of the high income threshold by reference to the increase in the full-time adult average weekly ordinary time earnings for all persons in Australia, as published by the Australian Statistician.

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

Senator Siewert moved the following amendment:

Clause 388, page 324 (after line 3), after subclause (1), insert:

- (1A) The Small Business Fair Dismissal Code must provide that, prior to giving a person a notice of dismissal, an employer must:
- (a) give the person warnings, in writing, that the employer is considering dismissing the person, including details of the reasons the employer is considering that action; and
  - (b) take all reasonable steps to meet with the person to discuss the warnings.

Debate ensued.

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

Senator Siewert moved the following amendment:

Clause 384, page 320 (line 30) to page 321 (line 21), omit subclause (2).

Debate ensued.

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

The Leader of the Australian Greens (Senator Bob Brown) moved the following amendments together by leave:

Clause 389, page 324 (after line 24), at the end of the clause, add:

- (3) A person's dismissal was not a case of *genuine redundancy* if:
- (a) the employer; or
  - (b) the employer's enterprise; or
  - (c) the enterprise of an associated entity of the employer;
- pays excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

Page 324 (after line 24), at the end of Division 3, add:

### **389A Dealing with excessive remuneration**

- (1) An employer must not terminate an employee's employment because of, or for reasons including, redundancy if:
- (a) the employer; or
  - (b) the employer's enterprise; or
  - (c) the enterprise of an associated entity of the employer;
- pays excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

- (2) Despite any other provision in this Part, if an employee's employment is terminated contrary to subsection (1), the employee is taken:
- (a) to have been unfairly dismissed; and
  - (b) to meet the requirements of subsection 390(1); and
  - (c) to be entitled to apply for a remedy under section 394.

Clause 524, page 417 (after line 25), after subclause (2), insert:

- (2A) An employer must not stand down an employee under subsection (1) if:
- (a) the employer; or
  - (b) the employer's enterprise; or
  - (c) the enterprise of an associated entity of the employer;
- pays excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

- (2B) Despite any other provision in this Part, if an employer purports to stand down an employee contrary to subsection (2A), the employee:
- (a) is entitled to continue to receive payments from the employer for that period; and
  - (b) is taken to be entitled to apply to FWA to deal with the dispute under subsection 526(3); and
  - (c) is taken, for the purposes of subsection 526(4), to have been dealt with unfairly.

Page 426 (after line 24), at the end of Part 3-6, add:

#### **Division 4—Reducing excessive executive salaries**

##### **536A Meaning of *excessive remuneration***

- (1) An employer pays excessive remuneration to a person if the amount (or value, as appropriate) of the remuneration paid to the person by the employer exceeds \$500,000 per annum, unless the employer has an executive high pay authorisation operating in relation to that person.
- (2) FWA may make an order (an *executive high pay authorisation*) applying to an employer in relation to a person if FWA is satisfied that the remuneration paid to the person by the employer is not excessive.
- (3) In determining whether the remuneration paid to a person is excessive, FWA must have regard to:
  - (a) community standards of reasonableness of remuneration;
  - (b) the extent to which the remuneration paid to the person by the employer could be, or has been, reduced so that the employer could avoid:
    - (i) terminating the employment of any person because of, or for reasons including, redundancy; or
    - (ii) standing down any person under subsection 524(1);
  - (c) the need to encourage the ongoing employment of the maximum number of people;
  - (d) the ratio of the remuneration to the average weekly wage;
  - (e) any other matter FWA considers relevant.
- (4) FWA may make an executive high pay authorisation, or may decide not to make an executive high pay authorisation, pursuant to an application from:
  - (a) an employer; or
  - (b) an employee who reasonably suspects that the employer intends to terminate their employment on the grounds of redundancy; or
  - (c) an organisation of employees entitled to represent a person referred to in paragraph (b).

- (5) FWA may make an executive high pay authorisation applying to an employer in relation to more than one person.
- (6) To avoid doubt, FWA may make an *executive high pay authorisation* at any time, including prior to the termination of any person's employment.

### 536B Interpretation

In this Division:

*employer* includes:

- (a) the employer's enterprise;
- (b) the enterprise of an associated entity of the employer.

*giving a financial benefit* has the same meaning it has in the *Corporations Act 2001*, and is to be interpreted in the manner specified in section 229 of that Act.

*remuneration* includes paying a salary or giving a financial benefit to a person, and includes any amount paid, promised or guaranteed in any form, including through consultancy agreements and grants of shares or other interests, and including any payment made upon resignation or retirement, however described.

Debate ensued.

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

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

Clause 394, page 329 (line 13), omit “7”, substitute “14”.

Senator Siewert moved the following amendments together by leave:

Clause 409, page 336 (lines 17 and 18), omit “that are about, or are reasonably believed to be about, permitted matters”.

Clause 413, page 340 (lines 17 and 18), omit “or multi-enterprise agreement”.

Clause 418, page 347 (after line 3), at the end of the clause, add:

- (5) As soon as practicable after making an order under subsection (1), FWA must attempt to conciliate the dispute giving rise to the industrial action.

Clause 425, page 354 (line 2), omit “must”, substitute “may”.

Clause 425, page 354 (line 2), after “suspending”, insert “for a period not exceeding 48 hours”.

Clause 443, page 364 (lines 20 to 22), omit paragraph (1)(b).

Clause 459, page 375 (lines 9 and 10), omit paragraph (1)(b).

Heading to Subdivision A, page 383 (line 4), omit “**Protected industrial action**”, substitute “**Industrial action**”.

Clause 470, page 383 (line 7), omit “protected”.

Clause 471, page 384 (line 4), omit “protected”.

Clause 471, page 384 (line 25), omit “protected”.

Clause 471, page 385 (line 26), omit “protected”.

Debate ensued.

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

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Siewert, in respect of subclause 409(4), clauses 412, 419, 422, 425, 426, 431 to 434, 474 and 475.

Subclause 409(4), clauses 412, 419, 422, 425, 426, 431 to 434, 474 and 475 agreed to.  
Senator Siewert moved the following amendment:

Clause 596, page 470 (line 16), at the end of subclause (4), add:  
; or (d) is a lawyer from a community legal centre.

Debate ensued.

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

Senator Ludwig moved—That the report from the committee be adopted.

*Proposed reference to committees:* Senator Fielding moved the following amendment:

At the end of the motion, add “and that:

- (1) The following matters be referred to the Economics Committee for inquiry and report by 11 June 2009:

The advantages and disadvantages of the Australian Industrial Relations Commission, and its proposed successor Fair Work Australia, holding a periodic, public tender process to select the default superannuation fund for each modern award, and any related matters.

- (2) The following matters be referred to the Education, Employment and Workplace Relations Committee for inquiry and report by 11 June 2009:

The amendment relating to modern award terms for long distance transport employees [Amendment no (2) of sheet [RE403]] proposed by the government during the committee stage of the bill, and any related matters.

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

Main question put and passed.

Senator Ludwig moved—That the bill be now read a third time.

Debate ensued.

Question put and passed.

Bill read a third time.

*Suspension of sitting:* The sitting of the Senate was suspended at 2.31 am till 9.30 am.

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FRIDAY, 20 MARCH 2009

At 9.30 am—

The sitting of the Senate resumed.

**50 PRAYERS**

The President read prayers.

**51 RURAL AND REGIONAL AFFAIRS AND TRANSPORT—STANDING COMMITTEE—  
LEAVE TO MEET DURING SITTING**

Senator O'Brien, by leave and at the request of the Chair of the Rural and Regional Affairs and Transport Committee (Senator Sterle), moved—That the Rural and Regional Affairs and Transport Committee be authorised to hold a public meeting during the sitting of the Senate today.

Question put and passed.

**52 COMMITTEE MEMBERSHIP**

The Acting Deputy President (Senator Crossin) informed the Senate that the President had received letters requesting changes in the membership of committees.

The Parliamentary Secretary for Social Inclusion (Senator Stephens), by leave, moved—That senators be discharged from and appointed to committees as follows:

**Climate Policy—Select Committee—**

Appointed—Participating members: Senators Bob Brown, Fielding, Hanson-Young, Ludlam and Siewert

**Legal and Constitutional Affairs—Standing Committee—**

Appointed—

Substitute members:

Senator Ludlam to replace Senator Hanson-Young for the committee's inquiry into access to justice

Senator Ludlam to replace Senator Hanson-Young for the committee's inquiry into the provisions of the Evidence Amendment (Journalists' Privilege) Bill 2009

Senator Ludlam to replace Senator Hanson-Young for the committee's inquiry into the provisions of the Law and Justice (Cross Border and Other Amendments) Bill 2009

Senator Siewert to replace Senator Hanson-Young for the committee's inquiry into the provisions of the Native Title Amendment Bill 2009

Participating member: Senator Hanson-Young

**Rural and Regional Affairs and Transport—Standing Committee—**

Appointed—

Substitute member: Senator Back to replace Senator Nash for the committee's inquiry into public passenger transport in Australia

Participating member: Senator Nash.

Question put and passed.

**53 ORDER OF BUSINESS—REARRANGEMENT**

The Parliamentary Secretary for Social Inclusion (Senator Stephens) moved—That intervening business be postponed till after consideration of government business order of the day no. 3 (Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008).

Question put and passed.

**54 AVIATION LEGISLATION AMENDMENT (2008 MEASURES NO. 2) BILL 2008**

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

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*In the committee*

Bill taken as a whole by leave.

Senator Xenophon moved the following amendments together by leave:

Schedule 1, item 11, page 7 (line 29), at the end of paragraph 32AP(3A)(b), add:  
; and (iv) the crew members in relation to the CVR information have given their consent in writing, after the CVR recording was made, for the copying or disclosure of the CVR information for the purposes of checking whether the equipment used to make the recording is functioning and reliable.

Schedule 1, page 7 (after line 29), after item 11, add:

**11A After subsection 32AP(3A)**

Insert:

- (3B) If crew members have declined to give their consent in writing under subparagraph (3A)(b)(iv) to two consecutive requests within a 12-month period in relation to checking particular equipment:
- (a) the condition of consent under that subparagraph does not apply to the next such request in relation to the same equipment; and
  - (b) crew members must be notified in writing of those circumstances.

Debate ensued.

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

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

Page 2 (after line 11), after clause 3, insert:

**4 Report of the Privacy Commissioner**

- (1) The Privacy Commissioner must examine the following matter:  
The privacy implications for flight crew members of the provisions of the *Civil Aviation Act 1988* relating to copying or disclosure of CVR information, as amended by Part 2 of Schedule 1 of this Act.
- (2) In examining the matter the Privacy Commissioner must consult representatives of associations affected by the provisions.
- (3) The Commissioner must produce a written report to the Minister within 15 months of the commencement of this Act about the operation of the provisions referred to in paragraph (1) over its first 12 months, and may include in the report any recommendations the Commissioner wishes to make for amendment of the provisions to address any privacy concerns.

- (4) In examining and reporting on this matter the Privacy Commissioner may exercise any of the powers conferred upon him or her by the *Privacy Act 1988*, and may delegate any matter to a member of his or her staff as provided for by section 99 of that Act.
- (5) The Minister shall cause a copy of a report given to the Minister under subsection (2) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Bill, as amended, agreed to.

Bill to be reported with an amendment.

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

On the motion of the Parliamentary Secretary for Social Inclusion (Senator Stephens) the report from the committee was adopted and the bill read a third time.

**55 SOCIAL SECURITY AND VETERANS' ENTITLEMENTS AMENDMENT  
(COMMONWEALTH SENIORS HEALTH CARD) BILL 2009**

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

Debate resumed.

Question put.

The Senate divided—

**AYES, 31**

Senators—

Arbib	Evans	Ludlam	Polley
Bilyk	Farrell	Ludwig	Pratt
Bishop	Feeney	Lundy	Siewert
Brown, Bob	Fielding	Marshall	Stephens
Brown, Carol	Furner	McLucas	Sterle
Cameron	Hanson-Young	Milne	Wortley
Collins	Hogg	Moore	Xenophon
Crossin	Hutchins	O'Brien (Teller)	

**NOES, 29**

Senators—

Abetz	Cash	Humphries	Ronaldson
Back	Colbeck	Johnston	Ryan
Barnett	Coonan	Kroger	Scullion
Bernardi	Eggleston	Mason	Troeth
Birmingham	Fierravanti-Wells	McGauran	Williams (Teller)
Boyce	Fifield	Minchin	
Brandis	Fisher	Nash	
Bushby	Heffernan	Parry	

Question agreed to.

Bill read a second time.

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

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*In the committee*

Bill taken as a whole by leave.

Senator Siewert moved the following requests for amendments together by leave:

That the House of Representatives be requested to make the following amendments:

Schedule 1, page 4 (after line 16), after item 2, insert:

**2A Point 1071-12 (table)**

Repeal the table, substitute:

<b>Seniors Health Card Taxable Income Limit Table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per year</b>	<b>Additional dependent child Amount per year</b>
1	Not member of couple	\$60,000	\$639.60
2	Partnered	\$42,500	\$639.60
3	Member of illness separated couple	\$60,000	\$639.60
4	Member of respite care couple	\$60,000	\$639.60
5	Partnered (partner in gaol)	\$60,000	\$639.60

Schedule 1, page 5 (after line 7), after item 5, insert:

**5A Point 118ZZA-11 (table)**

Repeal the table, substitute:

<b>Seniors Health Card Taxable Income Limit Table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per year</b>	<b>Additional dependent child Amount per year</b>
1	Not member of couple	\$60,000	\$639.60
2	Partnered	\$42,500	\$639.60
3	Member of illness separated couple	\$60,000	\$639.60

<b>Seniors Health Card Taxable Income Limit Table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per year</b>	<b>Additional dependent child Amount per year</b>
4	Member of respite care couple	\$60,000	\$639.60

Debate ensued.

Question—That the requests be agreed to—put.

The committee divided—

AYES, 7

Senators—

Brown, Bob	Hanson-Young	Milne	Xenophon
Fielding	Ludlam	Siewert (Teller)	

NOES, 35

Senators—

Abetz	Collins	Hutchins	Parry (Teller)
Back	Crossin	Kroger	Polley
Barnett	Evans	Ludwig	Pratt
Bilyk	Farrell	Lundy	Ryan
Birmingham	Feeney	Marshall	Scullion
Bishop	Fierravanti-Wells	McLucas	Stephens
Boyce	Fifield	Moore	Sterle
Brown, Carol	Fisher	Nash	Wortley
Cameron	Furner	O'Brien	

Question negatived.

Senator Siewert moved the following amendment:

Page 10 (after line 14), at the end of the bill, add:

**Part 4—Application**

**21 Application**

The amendments made by this Schedule do not apply in relation to an individual who had or was qualified to have a seniors health card under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986* as in force immediately before the commencement of this Schedule.

Debate ensued.

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

The Parliamentary Secretary for Social Inclusion (Senator Stephens) moved—That the committee report progress and ask leave to sit again.

Question put and passed.

The Acting Deputy President (Senator Crossin) resumed the chair and the Temporary Chair of Committees reported that the committee had considered the bill, made progress and asked leave to sit again.

Ordered, on the motion of Senator Stephens, that the committee have leave to sit again at a later hour.

*Suspension of sitting:* On the motion of Senator Stephens the sitting of the Senate was suspended at 12.31 pm till 1.30 pm.

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*At 1.30 pm—*

**56 DEATH OF AUSTRALIAN SOLDIER—STATEMENT BY LEAVE**

The Leader of the Government in the Senate (Senator Evans), by leave, made a statement relating to the death of an Australian soldier on combat operations in Afghanistan.

*Statements by leave:* The Leader of the Opposition in the Senate (Senator Minchin), the Leader of the Australian Greens (Senator Bob Brown), the Leader of the Family First Party (Senator Fielding) and Senator Xenophon, by leave, made statements relating to the matter.

All senators present stood in silence.

**57 TAX LAWS AMENDMENT (2009 MEASURES NO. 1) BILL 2009**

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

Debate resumed.

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

**58 THERAPEUTIC GOODS AMENDMENT (MEDICAL DEVICES AND OTHER MEASURES) BILL 2008 [2009]**

Order of the day read for the adjourned debate on the motion of the Minister for Human Services (Senator Ludwig)—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 Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas) consideration of the bill in committee of the whole was made an order of the day for a later hour.

**59 DEPARTMENT OF THE PRIME MINISTER AND CABINET—MS BARBARA BELCHER—RETIREMENT—STATEMENT BY LEAVE**

The Special Minister of State (Senator Faulkner), by leave, made a statement relating to the retirement of Ms Barbara Belcher, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet.

*Statement by leave:* The Leader of the Opposition in the Senate (Senator Minchin), by leave, made a statement relating to the matter.

60 **APPROPRIATION BILL (NO. 3) 2008-2009**  
**APPROPRIATION BILL (NO. 4) 2008-2009**  
**APPROPRIATION BILL (NO. 5) 2008-2009**  
**APPROPRIATION BILL (NO. 6) 2008-2009**

Order of the day read for the adjourned debate on the motions of the Minister for Human Services (Senator Ludwig) and the Parliamentary Secretary for Government Service Delivery (Senator Arbib)—That these bills be now read a second time.

Debate resumed.

The Leader of the Australian Greens (Senator Bob Brown) moved the following amendment:

At the end of the motion, add “, and the Senate endorses recommendation 1 of the Finance and Public Administration Committee in its report on the additional estimates 2008-09, that the Government respond to the Standing Committee on Appropriations and Staffing reports on the ordinary annual services of the government as a matter of priority”.

Debate ensued.

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

61 **THERAPEUTIC GOODS AMENDMENT (MEDICAL DEVICES AND OTHER MEASURES)**  
**BILL 2008 [2009]**

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

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*In the committee*

Bill, taken as a whole by leave, debated.

Senator Siewert moved the following amendment:

Schedule 1, item 2, page 4 (after line 29), after section 41GS, insert:

**41GSA Parliamentary committee scrutiny of exemption notices**

- (1) As soon as practicable after the commencement of the first session of each Parliament a standing committee of each House of the Parliament is to be nominated, according to the practice of the relevant House, as its *nominated committee* for the purposes of this section.
- (2) As soon as practicable after 30 June and 31 December each year the Minister must cause a document setting out the particulars of:
  - (a) all exemptions under section 41GS; and
  - (b) all variations and revocations under section 41GU;
 in the previous six-month period to be provided to the nominated committee of each House of the Parliament.
- (3) Each nominated committee is to receive each document provided in accordance with subsection (2) on a confidential basis.
- (4) Each committee, and each member of each committee, must treat the information contained in any such document as confidential, and must not publish any part of that information to any other person except as authorised by this section.

- (5) The committee may refer to the information contained in any such document and any conclusions drawn from it in a report to either House of the Parliament, but must not disclose the information in such a report.

Debate ensued.

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

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Parliamentary Secretary for Social Inclusion (Senator Stephens) the report from the committee was adopted and the bill read a third time.

## 62 FAIR WORK BILL 2008

A message from the House of Representatives was reported as follows:

Message no. 298, dated 20 March 2009—Fair Work Bill 2008, agreeing to amendments nos 1 to 30, 35 to 93, 95 to 135 and 137 to 231 made by the Senate and disagreeing to amendments nos 31 to 34, 94 and 136.

Ordered, on the motion of the Minister for Human Services (Senator Ludwig), that the message be considered in committee of the whole immediately.

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### *In the committee*

#### SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE TO WHICH THE HOUSE OF REPRESENTATIVES HAS DISAGREED

- (31) Clause 23, page 41 (line 31), omit “15 employees”, substitute “20 employees”.
- (32) Clause 23, page 42 (line 5), at the end of subclause (2), add:  
; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and  
(d) the regulations must prescribe a method for the calculation of *full-time equivalent positions* for the purposes of this section.
- (33) Clause 121, page 122 (line 5), before “Section”, insert “(1)”.
- (34) Clause 121, page 122 (after line 11), at the end of the clause, add:  
(2) Subsection 23(1) has effect in relation to this section as if it were modified by omitting “20 employees” and substituting “15 employees”.  
(3) Subsection 23(2) has effect in relation to this section as if it were modified by omitting paragraphs (c) and (d).
- (94) Clause 194, page 183 (line 13), at the end of the clause, add:  
; or (h) any matter that restricts, controls or dictates the use or non-use of independent contractors.

(136) Clause 3, page 3 (line 34), omit “enterprise-level”, substitute “enterprise-level or workplace-level”.

Senator Ludwig moved—That the committee does not insist on its amendments nos 31 to 34, 94 and 136 to which the House of Representatives has disagreed.

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*Document:* Senator Ludwig tabled the following document:

Fair Work Bill 2008—Copy of letter from the Deputy Prime Minister (Ms Gillard) to the Leader of the Family First Party (Senator Fielding), dated 20 March 2009.

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Debate ensued.

Question put.

The committee divided—

AYES, 29

Senators—

Arbib	Evans	Ludlam	Pratt
Bilyk	Farrell	Ludwig	Siewert
Bishop	Faulkner	Lundy	Stephens
Brown, Bob	Feeney	Marshall	Sterle
Brown, Carol	Fielding	Milne	Wortley
Cameron	Hanson-Young	Moore	
Collins	Hogg	O'Brien (Teller)	
Conroy	Hutchins	Polley	

NOES, 29

Senators—

Abetz	Cash	Humphries	Ronaldson
Back	Colbeck	Johnston	Ryan
Barnett	Coonan	Kroger	Scullion
Bernardi	Eggleston	Mason	Williams (Teller)
Birmingham	Fierravanti-Wells	McGauran	Xenophon
Boyce	Fifield	Minchin	
Brandis	Fisher	Nash	
Bushby	Heffernan	Parry	

The ayes and noes were equal and so the question was negatived.

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*Statement by Chair of Committees:* The Chair of Committees (Senator Bernardi) made the following statement:

The ayes and noes being equal, the amendments are not insisted upon. As has been explained on previous such occasions, the reason for this is that the amendments required a majority to be carried in the first instance, and the equally divided votes on the question of whether the Senate should insist on its amendments indicates that there is now not a majority in support of the amendments.

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Resolution to be reported.

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The President resumed the chair and the Temporary Chair of Committees (Senator Bernardi) reported that the committee had considered message no. 298 from the House of Representatives relating to the Fair Work Bill 2008 and had resolved not to insist on amendments nos 31 to 34, 94 and 136 made by the Senate to which the House had disagreed.

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

**63 TAX LAWS AMENDMENT (2009 MEASURES NO. 1) BILL 2009**

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

*Statements by leave:* The Minister for Human Services (Senator Ludwig) and Senator Coonan, by leave, made statements relating to the matter.

Question put and passed.

Bill read a second time.

*Proposed instruction to committee of the whole:* Senator Siewert, by leave, moved—That it be an instruction to the committee of the whole that the committee:

- (a) divide the Tax Laws Amendment (2009 Measures No. 1) Bill 2009 to incorporate in a separate bill the provisions of Schedule 3—Reforms to income tests; and
- (b) add to that bill enacting words, provisions for titles and commencement, and a provision giving effect to amending schedules.

Debate ensued.

Senator Ludlam, by leave and on behalf of Senator Siewert, withdrew the motion.

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

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*In the committee*

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

Bill to be reported without amendment.

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The President resumed the chair and the Temporary Chair of Committees (Senator Carol Brown) reported accordingly.

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

**64 APPROPRIATION BILL (NO. 3) 2008-2009**  
**APPROPRIATION BILL (NO. 4) 2008-2009**  
**APPROPRIATION BILL (NO. 5) 2008-2009**  
**APPROPRIATION BILL (NO. 6) 2008-2009**

Order of the day read for the adjourned debate on the motions of the Minister for Human Services (Senator Ludwig) and the Parliamentary Secretary for Government Service Delivery (Senator Arbib)—That these bills be now read a second time—and on the amendment moved by the Leader of the Australian Greens (Senator Bob Brown) (see entry no. 60).

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

Appropriation bills—Workplace relations—Copy of letter from the Deputy Prime Minister (Ms Gillard) to the Leader of the Australian Greens (Senator Bob Brown).

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

Main question, as amended, put and passed.

Bills read a second time.

An amendment to the bills was circulated, but it was indicated that it would not be moved, and the bills were not considered in committee.

On the motion of the Parliamentary Secretary for Social Inclusion (Senator Stephens) the bills were read a third time.

**65 ADVANCE TO THE FINANCE MINISTER—2007-08**

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

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*In the committee*

The Parliamentary Secretary for Social Inclusion (Senator Stephens) moved—That the committee approves the statement of Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2008.

Question put and passed.

Resolution to be reported.

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The President resumed the chair and the Temporary Chair of Committees (Senator Carol Brown) reported accordingly.

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

**66 HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT SERVICES AND AMENITIES, AND OTHER MEASURES) BILL 2009  
CUSTOMS LEGISLATION AMENDMENT (NAME CHANGE) BILL 2009**

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

Message no. 294, dated 19 March 2009—A Bill for an Act to amend legislation relating to higher education, and for related purposes.

Message no. 295, dated 20 March 2009—A Bill for an Act to change the name of the Australian Customs Service, and for related purposes.

The Parliamentary Secretary for Social Inclusion (Senator Stephens) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

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

*Consideration of legislation:* Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

Senator Stephens moved—That the bills be listed on the *Notice Paper* as separate orders of the day.

Question put and passed.

**67 AVIATION LEGISLATION AMENDMENT (2008 MEASURES NO. 2) BILL 2008**

A message from the House of Representatives was reported agreeing to the amendment made by the Senate to the following bill:

Message no. 297, dated 20 March 2009—Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008.

**68 COMMITTEE MEMBERSHIP**

A message from the House of Representatives was reported informing the Senate of the appointment of members of the House of Representatives to the Joint Standing Committee on Foreign Affairs, Defence and Trade, as follows:

Message no. 296, dated 20 March 2009—Mr Murphy and Mr Oakeshott.

**69 NEXT MEETING OF SENATE**

The Parliamentary Secretary for Social Inclusion (Senator Stephens) moved—That the Senate, at its rising, adjourn till Tuesday, 12 May 2009, at 12.30 pm, or such other time as may be fixed by the President or, in the event of the President being unavailable, by the Deputy President, and that the time of meeting so determined shall be notified to each senator.

Question put and passed.

**70 ADJOURNMENT**

The Parliamentary Secretary for Social Inclusion (Senator Stephens) moved—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 6.12 pm till Tuesday, 12 May 2009 at 12.30 pm.

**71 ATTENDANCE**

Present, all senators except Senator Adams (on leave).

**HARRY EVANS**  
Clerk of the Senate