

2002-03

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 71

MONDAY, 24 MARCH 2003

Contents

1	Meeting of Senate	1629
2	Death of Former Clerk of the Senate Rupert Loof, CBE.....	1629
3	Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2]	1629
4	Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2]	1629
5	Questions	1629
6	Ministers—Answers to Questions	1630
7	Immigration—Mandatory Detention—Trafficking for Prostitution—Answer to Question	1630
8	Petition.....	1630
9	Notices.....	1630
10	Postponements.....	1633
11	Economics Legislation Committee—Extension of Time to Report.....	1633
12	Public Transport.....	1633
13	Legal and Constitutional Legislation Committee—Final Report—Powers and Functions of the Australian Law Reform Commission—Adoption of Recommendation.....	1634
14	Auditor-General—Audit Report No. 34 of 2002-03—Document.....	1634
15	Parliamentary Zone—Capital Works Proposals—Documents.....	1634
16	Foreign Affairs, Defence and Trade References Committee—Reference	1635
17	Australian Parliamentary Delegation to the United Kingdom and the Netherlands—Document.....	1636
18	Documents.....	1636
19	Indexed Lists of Departmental and Agency Files—Order for Production of Documents—Document.....	1637
20	Departmental and Agency Contracts—Order for Production of Documents—Documents	1637
21	Native Title and the Aboriginal and Torres Strait Islander Land Fund—Joint Statutory Committee—Change in Membership.....	1637

22	Economics Legislation Committee—Report—Energy Grants (Credits) Scheme Bill 2003 and the Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003	1637
23	Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2]	1638
24	Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2]	1645
25	Broadcasting Services Amendment (Media Ownership) Bill 2002	1647
26	Adjournment	1647
27	Attendance.....	1647

1 **MEETING OF SENATE**

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

2 **DEATH OF FORMER CLERK OF THE SENATE RUPERT LOOF, CBE**

The President informed the Senate of the death, on 21 March 2003, of Rupert Loof, CBE, former Clerk of the Senate.

3 **WORKPLACE RELATIONS AMENDMENT (FAIR DISMISSAL) BILL 2002 [NO. 2]**

A message from the House of Representatives was reported insisting on disagreeing to the amendments made and insisted on by the Senate to the following bill:

Message no. 262, dated 6 March 2003—Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2].

Ordered, on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell), that the message be considered in committee of the whole immediately.

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

In the committee

Senator Ian Campbell moved—That the committee does not further insist on its amendments to which the House of Representatives has insisted on disagreeing.

Debate resumed.

Question put and negatived.

Resolution to be reported.

The Acting Deputy President (Senator Watson) resumed the chair and the Chair of Committees (Senator Hogg) reported that the committee had considered message no. 262 from the House of Representatives relating to the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2] and had resolved to further insist on the amendments made by the Senate to which the House had insisted on disagreeing.

On the motion of Senator Ian Campbell the report from the committee was adopted.

4 **WORKPLACE RELATIONS AMENDMENT (SECRET BALLOTS FOR PROTECTED ACTION) BILL 2002 [NO. 2]**

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

Debate resumed.

At 2 pm: Debate was interrupted.

5 **QUESTIONS**

Questions without notice were answered.

6 MINISTERS—ANSWERS TO QUESTIONS

The Leader of the Opposition in the Senate (Senator Faulkner) moved—That the Senate take note of answers given by ministers to questions without notice asked by opposition senators today.

Debate ensued.

Question put and passed.

7 IMMIGRATION—MANDATORY DETENTION—TRAFFICKING FOR PROSTITUTION—ANSWER TO QUESTION

Senator Greig moved—That the Senate take note of the answer given by the Minister for Justice and Customs (Senator Ellison) to a question without notice asked by Senator Greig today relating to mandatory detention and the practice of ‘trafficking’ in women for prostitution.

Question put and passed.

8 PETITION

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

From 176 petitioners, requesting that the Senate call for a judicial inquiry into the role of the Australian Defence Force and the Australian Federal Police in the sinking of a boat now identified as ‘Suspected Illegal Entry Vessel X’ and the people-smuggling disruption program in Indonesia.

9 NOTICES

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook): To move on the next day of sitting—That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on its examination of the Government’s foreign and trade policy strategy be extended to 17 June 2003. (*general business notice of motion no. 415*)

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook): To move on the next day of sitting—That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 27 March 2003, from 4 pm to 9 pm, to take evidence for the committee’s inquiry into Australia’s relationship with Papua New Guinea and other Pacific island countries. (*general business notice of motion no. 416*)

The Chair of the Foreign Affairs, Defence and Trade Legislation Committee (Senator Sandy Macdonald): To move on the next day of sitting—That the Foreign Affairs, Defence and Trade Legislation Committee be authorised to hold public meetings during the sittings of the Senate on Monday, 16 June 2003, from 7 pm, and on Monday, 23 June 2003, from 7 pm, to take evidence for the committee’s inquiry into off-setting arrangements between the Veterans’ Entitlements Act and the Military Compensation Scheme. (*general business notice of motion no. 417*)

Senator Murray: To move on 27 March 2003—That the following bill be introduced: A Bill for an Act to amend the *Commonwealth Electoral Act 1918* to provide for truth in political advertising, and for related purposes. ***Electoral Amendment (Political Honesty) Bill 2003***. (*general business notice of motion no. 418*)

The Chair of the Environment, Communications, Information Technology and the Arts References Committee (Senator Allison): To move on the next day of sitting—That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on environmental performance at the Ranger, Jabiluka, Beverley and Honeymoon uranium operations be extended to 15 May 2003. (*general business notice of motion no. 419*)

The Leader of the Australian Democrats (Senator Bartlett): To move on the next day of sitting—That there be laid on the table, no later than 4 pm on Wednesday, 26 March 2003, the Memorandum of Understanding signed on or around 12 March 2003 between the Australian Government and the Islamic Republic of Iran, which includes measures to combat illegal migration. (*general business notice of motion no. 420*)

The Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (Senator Johnston): To move on the next day of sitting—That the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund be authorised to hold a public meeting during the sitting of the Senate on Thursday, 27 March 2003, from 7.30 pm, to take evidence for the committee's inquiry into the effectiveness of the National Native Title Tribunal. (*general business notice of motion no. 421*)

Senator Stott Despoja: To move on the next day of sitting—That the Customs (Prohibited Exports) Amendment Regulations 2003 (No. 1), as contained in Statutory Rules 2003 No. 17 and made under the *Customs Act 1901*, be disallowed.

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

(a) notes that:

- (i) the South Australian Parliament has passed the Nuclear Waste Storage Facility (Prohibition) Amendment Bill (No. 19),
- (ii) the legislation bans both the establishment of a nuclear waste dump in South Australia and the transportation of nuclear waste from other states to South Australia,
- (iii) a 4-month sunset clause is contained in the legislation to allow legal advice to be sought to strengthen its effect, and
- (iv) a majority of South Australians and the South Australian Parliament are opposed to the Federal Government plan to site a nuclear waste storage facility in that state; and

(b) calls on the Federal Government:

- (i) to recognise that the South Australian Parliament has legislated according to the wishes of that state, and
- (ii) to not proceed to locate a national nuclear waste repository in South Australia. (*general business notice of motion no. 422*)

Senator Brown: To move on the next day of sitting—That the Approval of Amendment 41 of the National Capital Plan (Gungahlin Drive Extension), made under section 19 of the *Australian Capital Territory (Planning and Land Management) Act 1988*, be disallowed.

The Minister for the Arts and Sport (Senator Kemp): To move on the next day of sitting—That the Senate—

- (a) congratulates the Australian One Day Cricket Team on its outstanding achievement in winning the 2003 World Cup in South Africa on Sunday, 23 March 2003;
- (b) conveys, on behalf of all Australians, the nation's pride and congratulations for the performances of all the team members who played in the team over the course of the competition;
- (c) expresses its thanks to all the team's support staff and others who have contributed to the success of the team;
- (d) notes that Australia is the only nation to have won this prestigious World Cup on three occasions and, in doing so, its team was undefeated throughout the competition, winning 11 straight matches, scoring its highest ever One Day International total in the final, and extending its winning run to 17 One Day Internationals and 17 consecutive World Cup wins;

- (e) notes that a number of the members of the team are past scholarship holders with the Australian Institute of Sport; and
- (f) acknowledges the contribution of the Australian Sports Commission to the development of young Australian cricketers.

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell): To move on the next day of sitting—That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Corporations (Fees) Amendment Bill 2002
 Corporations (Review Fees) Bill 2002
 Corporations Legislation Amendment Bill 2002
 Energy Grants (Credits) Scheme Bill 2003
 Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003
 Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 [No. 2]
 Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Bill 2002
 Industry, Tourism and Resources Legislation Amendment Bill 2002
 Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003
 Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002
 National Blood Authority Bill 2002
 Taxation Laws Amendment Bill (No. 7) 2002
 Veterans' Affairs Legislation Amendment Bill (No. 3) 2002
 Workplace Relations Amendment (Termination of Employment) Bill 2002.

Documents: Senator Ian Campbell tabled the following documents:

Consideration of legislation—Statements of reasons [10] for introduction and passage of certain bills in the 2003 autumn sittings.

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

- (a) notes that:
 - (i) Alcoa Corporation plans to build an aluminium smelter in Iceland, which will use power from the proposed new Karahnjukar dam project,
 - (ii) the Karahnjukar project, to be built by Iceland's National Power Company, consists of nine dams, three reservoirs, tunnels and river diversions, which will destroy the second largest remaining wilderness area in western Europe as well as habitats for rare birds, seals and reindeer, and
 - (iii) a coalition of 120 non-government organisations from 47 countries, including the Iceland Nature Conservation Association, International Rivers Network, Friends of the Earth International and World Wide Fund for Nature, opposes the Karahnjukar project;

- (b) considers that the Karahnjúkar dams and associated smelter are incompatible with Alcoa's claims to support sustainable development and environmental excellence;
- (c) calls on Alcoa to cancel plans for this and any other smelters based on new dams in Iceland's eastern highlands; and
- (d) joins the call for banks and other financial institutions not to provide any funds for the Karahnjúkar dams or the smelter. (*general business notice of motion no. 423*)

Senator Brown: To move 5 sitting days after today—That the Space Activities Amendment Regulations 2003 (No. 1), as contained in Statutory Rules 2003 No. 33 and made under the *Space Activities Act 1998*, be disallowed.

10 POSTPONEMENTS

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for 25 March 2003, relating to the disallowance of items [2356], [2357] and [2358] of Schedule 2 to the Migration Amendment Regulations 2002 (No. 10), postponed till 26 March 2003.

General business notice of motion no. 389 standing in the name of Senator Evans for today, relating to the decline in the rate of bulk billing, postponed till 25 March 2003.

General business notice of motion no. 410 standing in the name of Senator Allison for today, relating to wind energy, postponed till 25 March 2003.

General business notice of motion no. 412 standing in the name of Senator Stott Despoja for today, relating to World Water Day, postponed till 25 March 2003.

11 ECONOMICS LEGISLATION COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Ferris, at the request of the Chair of the Economics Legislation Committee (Senator Brandis), amended Senator Brandis' notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 411—That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Corporations (Fees) Amendment Bill 2002 and two related bills be extended to 26 March 2003.

Question put and passed.

12 PUBLIC TRANSPORT

Senator Crossin, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 413—That the Senate—

- (a) condemns the Howard Government's 7 years of lack of interest and denial on public transport, as evidenced by:
 - (i) its decision to add a goods and services tax to fares,
 - (ii) its failure to address the fringe benefit tax disincentives on public transport fares,
 - (iii) its failure to give urban buses a fair go under the Diesel and Alternative Fuel Grant Scheme, and
 - (iv) its stated denial of any responsibility or consideration of public transport in the Auslink Green Paper that purports to lay the groundwork for a national transport plan;

- (b) notes, with concern, the impact of increased congestion in urban and outer urban areas on quality of life, health, and access to jobs and services for Australians;
- (c) emphasises the environmental gains to be made through policy measures that reduce transport emissions, especially by reducing car dependency;
- (d) stresses that access to public transport is an issue in all regions, including regional towns and cities, impacting daily on access to jobs, education and services for Australians; and
- (e) calls on the Howard Government:
 - (i) to release any policy option and research papers commissioned or undertaken by the Commonwealth that canvass policy measures and costs associated with tax and regulatory barriers to increasing public transport usage, including the 'Cost Benefit Analysis Study for Exempting Employer-Provided Public Transport from Fringe Benefits Taxation' conducted by the Australian Greenhouse Office in 2002, and
 - (ii) to accept a role for the Commonwealth in relation to public transport and declare that role in the Auslink White Paper, due to be released in 2003.

Question put and negatived.

**13 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—FINAL REPORT—
POWERS AND FUNCTIONS OF THE AUSTRALIAN LAW REFORM COMMISSION—
ADOPTION OF RECOMMENDATION**

Senator Ferris, at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 414—That the recommendation in the report of the Legal and Constitutional Legislation Committee on the statutory powers and functions of the Australian Law Reform Commission, that the reference to the committee not proceed further, be adopted.

Question put and passed.

14 AUDITOR-GENERAL—AUDIT REPORT NO. 34 OF 2002-03—DOCUMENT

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

Auditor-General—Audit report no. 34 of 2002-03—Performance audit—Pest and disease emergency management—Follow-up audit: Department of Agriculture, Fisheries and Forestry.

15 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSALS—DOCUMENTS

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following documents:

Parliament Act—Parliamentary Zone—Capital works—Proposal, together with supporting documentation, relating to the design and location of pedestrian and street lights in the Parliamentary Zone.

Notice of motion: Senator Ian Campbell, by leave, gave a notice of motion as follows: To move on 27 March 2003—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the design and location of pedestrian lighting in the Parliamentary Zone.

16 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REFERENCE

Leave was granted for business of the Senate order of the day no. 3, proposing the reference of matters to the Foreign Affairs, Defence and Trade Legislation Committee, to be called on immediately.

Order of the day read for the further consideration of the motion of Senator Brown—That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 26 June 2003:

The operation and effectiveness of Australia's security and intelligence agencies in the lead up to the Bali bombings, including:

- (a) the discrepancies, if any, between Australia and other nations (including the United States of America) in intelligence received regarding terrorist operations prior to the bombings;
- (b) action taken in Australia and elsewhere to warn the public of potential dangers; and
- (c) any other matters concerning security and intelligence agencies affecting Australians in relation to the Bali bombings.

—*And of the amendment moved by the Leader of the Opposition in the Senate (Senator Faulkner):*

Omit all words after "26 June 2003", substitute:

The performance of the Department of Foreign Affairs and Trade (DFAT) and other relevant agencies of the Commonwealth Government in the assessment and dissemination of threats to the security of Australians in South East Asia in the period 11 September 2001 to 12 October 2002, including:

- (a) the assessment made by DFAT and other relevant agencies of the Commonwealth Government of the threat to Australians in South East Asia from al Qaeda (and associated terrorist organisations) prior to 11 September 2001;
- (b) any change in the assessment of the threat to Australians in South East Asia from these terrorist organisations arising from the terrorist events of 11 September 2001 and the decision by Australia to participate in military actions with other coalition partners against al Qaeda in Afghanistan in November 2001;
- (c) any further changes in the assessment of the threat to Australians in South East Asia from these terrorist organisations arising from the arrest and interrogation of the so-called 'Singapore bombers' in the period December 2001 to February 2002;
- (d) any further change in threat assessments to Australians in South East Asia arising from the arrest and interrogation of Omar al-Faruq;
- (e) any subregional variations on the assessment of the threat to Australians in South East Asia in the period 11 September 2001 to 12 October 2002, in particular within Indonesia, including Jakarta and Bali;
- (f) any differences between the assessments of the threat made by DFAT and other Commonwealth Government agencies, and the assessments of the threat made by the United Kingdom, the United States, New Zealand, Singapore and Canada over the security of their nationals for the same period;
- (g) any differences between the assessments of the threat made by DFAT and other related agencies of the Commonwealth Government and the content of the travel advisories, travel bulletins and embassy bulletins provided by DFAT in the period 11 September 2001 to 12 October 2002;

- (h) any differences between DFAT travel advisories, travel bulletins and embassy bulletins in the period 11 September 2001 to 12 October 2002;
- (i) DFAT's conclusions of any deficiencies in the assessment system and the system for preparing travel advisories, travel bulletins and embassy bulletins in the period 11 September 2001 to 12 October 2002; and
- (j) DFAT's conclusions on improvements to be dissemination of travel advisories, travel bulletins and embassy bulletins to the Australian travelling public in the future.

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

Main question, as amended, put.

The Senate divided—

AYES, 33

Senators—

Bartlett	Crossin	Lees	Ray
Bishop	Denman	Ludwig	Ridgeway
Bolkus	Evans	Mackay (Teller)	Stephens
Brown	Faulkner	Marshall	Stott Despoja
Buckland	Forshaw	McLucas	Webber
Campbell, George	Greig	Moore	Wong
Carr	Harradine	Murray	
Cherry	Hogg	Nettle	
Collins	Hutchins	O'Brien	

NOES, 30

Senators—

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

Question agreed to.

17 AUSTRALIAN PARLIAMENTARY DELEGATION TO THE UNITED KINGDOM AND THE NETHERLANDS—DOCUMENT

Senator Forshaw, by leave, tabled the following document:

United Kingdom and the Netherlands—Report of the Australian parliamentary delegation, 18 to 29 November 2002, dated March 2003.

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

Debate ensued.

Question put and passed.

18 DOCUMENTS

The following documents were tabled by the Clerk:

Australian Bureau of Statistics Act—Proposal No. 6 of 2003.

Classification (Publications, Films and Computer Games) Act—Guidelines for the Classification of Films and Computer Games.

- Defence Act—Determination under section—
 58B—Defence Determination 2003/7.
 58H—Defence Force Remuneration Tribunal—Determinations Nos 2-4 of 2003.
- Financial Sector (Collection of Data) Act—Determination of reporting standards—
 ARS 231.1a, ARS 231.1b, ARS 231.2, ARS 231.3a and ARS 231.3b.
 RRS 231.1a, RRS 231.1b, RRS 231.2, RRS 231.3a and RRS 231.3b.
- Migration Act—Statement for period 1 July to 31 December 2002 under section 252A.

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

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

Indexed lists of departmental and agency files for the period 1 July to 31 December 2002—Statements of compliance—Department of Veterans' Affairs.

20 DEPARTMENTAL AND AGENCY CONTRACTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended on 27 September 2001:

Departmental and agency contracts—Letters of advice—2003 autumn sittings—
 Health and Ageing portfolio.
 Prime Minister and Cabinet portfolio agencies—
 Australian National Audit Office.
 Australian Public Service Commission.
 Commonwealth Ombudsman.
 Department of the Prime Minister and Cabinet.
 Office of National Assessments.
 Office of the Inspector-General of Intelligence and Security [nil return].
 Office of the Official Secretary to the Governor-General.

21 NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND—JOINT STATUTORY COMMITTEE—CHANGE IN MEMBERSHIP

A message from the House of Representatives was reported acquainting the Senate with a change in the membership of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, as follows:

Message no. 266, dated 24 March 2003—Ms Gillard in place of Dr Lawrence.

22 ECONOMICS LEGISLATION COMMITTEE—REPORT—ENERGY GRANTS (CREDITS) SCHEME BILL 2003 AND THE ENERGY GRANTS (CREDITS) SCHEME (CONSEQUENTIAL AMENDMENTS) BILL 2003

Pursuant to order, Senator Eggleston, at the request of the Chair of the Economics Legislation Committee (Senator Brandis), tabled the following report and documents:

Economics Legislation Committee—Energy Grants (Credits) Scheme Bill 2003 and the Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003—
 Report, dated March 2003, *Hansard* record of proceedings, documents presented to the committee, additional information and submissions [18].

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

23 WORKPLACE RELATIONS AMENDMENT (SECRET BALLOTS FOR PROTECTED ACTION) BILL 2002 [NO. 2]

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

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

Senator Murray moved the following amendments together by leave:

Schedule 1, item 2, page 3 (lines 27 to 29), omit the item, substitute:

2 Subsection 134(5) (paragraphs (d) and (e) of the definition of prescribed premises)

Omit “or 136”, substitute “, 136 or Division 8A of Part VIB”.

Schedule 1, item 20, page 7 (line 33), omit “170NBDC”, insert “170NBCD”.

Schedule 1, item 25, page 10 (line 33) to page 36 (line 18), omit the item, substitute:

25 After Division 8 of Part VIB

Insert:

Division 8A—Secret ballots on proposed protection action

Subdivision A—General

170NBA Object of Division and overview of Division

Object

- (1) The object of this Division is to establish a transparent process which allows union members directly concerned to choose, by means of a fair and democratic secret ballot, whether to authorise industrial action supporting or advancing claims by unions.

Overview of Division

- (2) Under Division 8, industrial action by union members is not protected action unless it has been authorised by:
 - (a) the relevant union; or
 - (b) a secret ballot of relevant union members; or
 - (c) the Commission.
- (3) A secret ballot is required if it has been:
 - (a) requested by a relevant union member; or
 - (b) ordered by the Commission.
- (4) A secret ballot is conducted according to:
 - (a) the rules of the relevant union; or
 - (b) if there are no union rules, the model rules established by the Commission;
 and in any case rules must be adopted within nine months of the commencement of this provision.

- (5) The rule that industrial action by employees is not protected action unless it has been authorised does not apply to action in response to an employer lockout (see section 170MQ).

170NBAA Definitions

In this Division:

ballot order means an order made under section 170NBBF requiring a protected action ballot to be held.

bargaining period has the meaning given in subsection 170MI(1).

negotiating party has the meaning given in subsection 170MI(3).

party, in relation to an application for a ballot order, means either of the following:

- (a) the applicant;
- (b) the employer of the relevant union members.

proposed agreement, in respect of a bargaining period, means the proposed agreement in respect of whose negotiation the bargaining period has been initiated.

protected action ballot means a secret ballot under this Division.

relevant union, in relation to proposed industrial action against an employer in respect of a proposed agreement, means any union which is a negotiating party to the agreement.

relevant union member, in relation to proposed industrial action against an employer in respect of a proposed agreement, means any member of the relevant union who is employed by the employer and whose employment will be subject to the agreement but does not include a union member who is a party to an AWA whose nominal expiry date has not passed.

Subdivision B—Authorising protected action

170NBB How is protected action authorised

Industrial action by employees is not protected action unless it has been authorised by:

- (a) the relevant union; or
- (b) a secret ballot of relevant union members; or
- (c) the Commission.

170NBBA How and when can a union authorise protected action

- (1) A relevant union may, subject to subsection (3), make a declaration to authorise industrial action by relevant union members as protected action in accordance with its rules provided that:
- (a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:
 - (i) the date of the declaration;
 - (ii) the nominal expiry date of the existing agreement; or
 - (b) if there are 2 or more existing agreements—the action commences during the 30-day period beginning on whichever is the later of the following:

- (i) the date of the declaration;
- (ii) whichever is the last occurring of the nominal expiry dates of those existing agreements; or
- (c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MQ.

- (2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division completed, during that later period.

- (3) If a relevant union does not have in place rules that establish how protected action may be authorised, then protected action requested by a relevant union member may only be authorised according to a secret ballot conducted under the Commission's model rules according to section 170NBCC.
- (4) A relevant union may not authorise protected action under subsection (1) if a secret ballot is required under section 170NBBB.

170NBBB When is a secret ballot required to authorise protected action

A secret ballot is required, and no protected action will be otherwise authorised, if it has been:

- (a) requested by at least two union members as provided by the rules; or
- (b) ordered by the Commission.

170NBBC Secret ballot may be requested by relevant union member

A relevant union member may, during a bargaining period for the negotiation of a proposed agreement under Division 2 or 3 of this Part, request the relevant union to which the member belongs to hold a protected action ballot to determine whether proposed industrial action has the support of the majority of relevant union members.

170NBBD Secret ballot may be ordered by Commission

- (1) A party referred to in subsection (2) may, during a bargaining period for the negotiation of a proposed agreement under Division 2 or 3 of this Part, apply to the Commission for an order for a ballot to be held to determine whether proposed industrial action has the support of a majority of relevant union members.

Note: For the duration of a bargaining period, see sections 170MK (when it begins) and 170MV (when it ends).

- (2) The following parties may apply:
 - (a) the relevant union to which the relevant union members mentioned in subsection (1) belong;
 - (b) any employer or organisation of employers who is a negotiating party to the proposed agreement.

170NBBE Commission must be satisfied of various matters

The Commission may grant an application for a ballot order, but must not grant the application unless it is satisfied that:

- (a) any court, judicial inquiry or Royal Commission findings justify such an order; or
- (b) any evidence or findings of coercion or intimidation of members proposing to take protected action makes such an order appropriate.

170NBBF Grant of application—order for ballot to be held

If the Commission grants the application, the Commission must order a protected action ballot to be held by the relevant union.

Note: The Commission may make an order requiring a secret ballot to be held for one or more bargaining periods.

Subdivision C—Conduct and results of protected action ballot

170NBC Ballot must be secret

A protected action ballot must be a secret ballot.

170NBCA How is a secret ballot to be conducted

- (1) Subject to subsection (2), a secret ballot is conducted according to:
 - (a) the rules of the relevant union; or
 - (b) if there are no union rules, the model rules established by the Commission.
- (2) Before conducting a secret ballot a union must give its relevant union members:
 - (a) reasonable notice that the secret ballot will be held; and
 - (b) information as to the matters which are to be dealt with in the proposed agreement and the general nature of the proposed industrial action.

170NBCB Union rules for conduct of secret ballot

- (1) A secret ballot is to be conducted according to the rules of the relevant union.
- (2) If the relevant union does not have rules in place in accordance with subsection (1) for the conduct of a secret ballot to authorise protected action, then the secret ballot is to be conducted in accordance with the model rules established by the Commission under section 170NBCC.
- (3) A union must adopt its own rules or the Commission's model rules within nine months of the commencement of this Division.

170NBCC Commission model rules for conduct of secret ballot

The Commission shall issue model rules for the conduct of secret ballots.

170NBCD Declaration of ballot results

As soon as practicable after the end of the voting, the union must, in writing:

- (a) make a declaration of the result of the ballot; and
- (b) inform the relevant union members, negotiating parties and the Industrial Registrar of the result.

170NBCE Effect of ballot

- (1) Industrial action is authorised under this Division if more than 50% of the votes validly cast were votes approving the action and:
 - (a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:
 - (i) the date of the declaration of the results of the ballot;
 - (ii) the nominal expiry date of the existing agreement; or
 - (b) if there are 2 or more existing agreements—the action commences during the 30-day period beginning on whichever is the later of the following:
 - (i) the date of the declaration of the results of the ballot;
 - (ii) whichever is the last occurring of the nominal expiry dates of those existing agreements; or
 - (c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration of the results of the ballot.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MQ.

- (2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division completed, during that later period.

- (3) The Commission may, by order, extend the 30-day period mentioned in paragraph (1)(a), (b) or (c) by up to 30 days if the employer and the applicant for the ballot order jointly apply to the Commission for the period to be extended.
- (4) The Commission must not make an order under subsection (3) extending the 30-day period if that period has been extended previously.
- (5) If industrial action commences during the 30-day period, stops and re-starts within a reasonable period after the 30-day period, no new authorisation is required if the industrial action is substantially the same.
- (6) Industrial action is taken, for the purposes of this Division, to be duly authorised even though a technical breach has occurred in authorising the industrial action, so long as the person or persons who committed the breach acted in good faith.

Subdivision D—Funding of ballots**170NBD Liability for cost of ballot***Union member initiated ballot*

- (1) The relevant union is the party liable for the cost of holding the protected action ballot, if a relevant union member initiated that ballot under section 170NBBC.

Commission ordered ballot

- (2) If the Commission ordered the ballot to be conducted, the applicant for a ballot order is the party liable for the cost of holding the ballot.
- (3) Subsections (1) and (2) have effect subject to subsection 170NBDA(3).

170NBDA Commonwealth has partial liability for cost of ballot

- (1) If:
 - (a) the liable party notifies the Industrial Registrar of the cost incurred by the relevant union in relation to the holding of the ballot; and
 - (b) does so within a reasonable time after the completion of the ballot;

the Industrial Registrar must determine how much (if any) of that cost was reasonably and genuinely incurred by the relevant union in holding the ballot. The amount determined by the Industrial Registrar is the *reasonable ballot cost*.

- (2) The Commonwealth is liable to pay to the liable party 80% of the reasonable ballot cost.
- (3) If the Commonwealth becomes liable to pay to the liable party 80% of the reasonable ballot cost, the liable party for the ballot order is:
 - (a) to the extent of the Commonwealth's liability, discharged from liability under section 170NBD for the cost of holding the ballot; and
 - (b) liable to pay 20% of the reasonable ballot cost 30 days after the Industrial Registrar's determination.
- (4) The regulations may prescribe matters to be taken into account by the Industrial Registrar in determining whether costs are reasonable and genuinely incurred.

Schedule 1, item 30, page 37 (line 15) to page 38 (line 12), omit the item, substitute:

30 After section 307

Insert:

307A False statement in application for protected action ballot order

- (1) A person must not, in an application for a ballot order under Division 8A of Part VIB:
 - (a) make a statement; and
 - (b) in making the statement, be reckless as to whether the statement is false or misleading in a material particular.

Penalty: 10 penalty units.

- (2) For the purposes of an offence against subsection (1), strict liability applies to the physical element, that the application is made under Division 8A of Part VIB.

Note: For *strict liability*, see section 6.1 of *Criminal Code*.

307B False statement in joint application for protected action ballot order

- (1) A person must not, in an application for a ballot order under Division 8A of Part VIB:

- (a) join with other persons in making a statement; and
- (b) in making the statement, be reckless as to whether the statement is false or misleading in a material particular.

Penalty: 10 penalty units.

- (2) For the purposes of an offence against subsection (1), strict liability applies to the physical element, that the application is made under Division 8A of Part VIB.

Note: For *strict liability*, see section 6.1 of *Criminal Code*.

Debate ensued.

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

Question—That the bill be agreed to—divided in respect of Schedule 1, items 3 to 15, 18, 19, 21 to 23, 26, 27, 31, 32 and 36.

Schedule 1, items 3 to 15, 18, 19, 21 to 23, 26, 27, 31, 32 and 36 agreed to.

Bill agreed to.

Bill to be reported without amendment.

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

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

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

Question put.

The Senate divided—

AYES, 31

Senators—

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

NOES, 36

Senators—

Allison	Collins	Hogg	Murphy
Bartlett	Conroy	Hutchins	Murray
Bishop	Cook	Kirk	Nettle
Bolkus	Crossin	Lees	Ray
Brown	Denman	Ludwig	Ridgeway
Buckland (Teller)	Evans	Lundy	Stephens
Campbell, George	Forshaw	Marshall	Stott Despoja
Carr	Greig	McLucas	Webber
Cherry	Harradine	Moore	Wong

Question negatived.

24 WORKPLACE RELATIONS AMENDMENT (PROHIBITION OF COMPULSORY UNION FEES) BILL 2002 [No. 2]

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

Senator Murray moved the following amendment:

Schedule 1, item 9, page 5 (lines 2 to 14), omit section 298SA, substitute:

298SA Permissible bargaining fees

- (1) An organisation may charge a permissible bargaining fee:
 - (a) in connection with an agreement certified under section 170LJ or Division 3 where:
 - (i) the agreement's beneficiaries include those who have not made a contribution to the costs of reaching the agreement by means of paying a union membership fee; and
 - (ii) this permissible bargaining fee is explained in clear language, and in writing, to all employees in advance of the vote on the agreement; and
 - (iii) details of the permissible bargaining fee, and the services for which it is payable, are set out in the agreement; and
 - (iv) all employees affected by the agreement are advised, prior to bargaining commencing, whether it is proposed to include a permissible bargaining services fee in the agreement, and that they may make submissions to the AIRC under subparagraph (vii) in relation to this fee; and
 - (v) in addition to the requirement in subsection 170LT(5), a valid majority of persons employed at the time, whose employment would be subject to the agreement, have genuinely agreed to the provision; and
 - (vi) the agreement provides for the method and timing of the fee to be paid; and
 - (vii) the AIRC is satisfied that the fee is fair and reasonable; and
 - (viii) the agreement provides that new employees pay the fee only for the pro rata period of the agreement from the time that their employment commences; or
 - (b) in connection with an agreement certified under section 170LK where:

- (i) the employee has agreed to pay for the provision of bargaining services in respect of the certified agreement; and
 - (ii) the employee has agreed to the total amount to be paid and this total amount covers all the bargaining services that may be provided in relation to the employee in respect of the certified agreement; and
 - (iii) the agreement was entered into before the bargaining services were provided.
- (2) An organisation of employers may charge a bargaining services fee in connection with an agreement certified under section 170LJ or 170LK or Division 3 where:
- (a) the employer has agreed to pay for the provision of bargaining services in respect of the certified agreement; and
 - (b) the employer has agreed to the total amount to be paid and this total amount covers all the bargaining services that may be provided in relation to the employer in respect of the certified agreement; and
 - (c) the agreement was entered into before the bargaining services were provided.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 33

Senators—

Allison	Cook	Kirk	Nettle
Bartlett	Crossin	Lees	Ray
Bishop	Denman	Ludwig	Stephens
Brown	Faulkner	Lundy	Stott Despoja
Buckland (Teller)	Forshaw	Marshall	Webber
Campbell, George	Greig	McLucas	Wong
Cherry	Harradine	Moore	
Collins	Hogg	Murphy	
Conroy	Hutchins	Murray	

NOES, 28

Senators—

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

Question agreed to.

Question—That the bill, as amended, be agreed to—divided in respect of items 11, 12, 14 and 15.

Question—That items 11, 12, 14 and 15 stand as printed—put and negatived.

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

Schedule 1, item 10, page 6 (lines 1 to 6), omit Division 5A, substitute:

Division 5A—False or misleading representations about bargaining services fees etc.

298SC False or misleading representations about bargaining services fees etc.

A person must not make a false or misleading representation about:

- (a) another person's liability to pay a bargaining services fee; or
- (b) another person's obligation to enter into an agreement to pay a bargaining services fee; or
- (c) another person's obligation to join an industrial association.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of the Special Minister of State (Senator Abetz) the report from the committee was adopted and the bill read a third time.

25 BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002

Order of the day read for the adjourned debate on the motion of the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald)—That this bill be now read a second time.

Debate resumed.

At 9.50 pm: Debate was interrupted while Senator Lundy was speaking.

26 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.29 pm till Tuesday, 25 March 2003 at 2 pm.

27 ATTENDANCE

Present, all senators except Senators Ferguson, Knowles*, Minchin and Sherry (* on leave).

HARRY EVANS
Clerk of the Senate