

2004-05

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

No. 51

TUESDAY, 11 OCTOBER 2005

**Contents**

1	Meeting of Senate .....	1227
2	Government Documents .....	1227
3	Selection of Bills—Standing Committee—Membership.....	1228
4	Hours of Meeting and Routine of Business—Variation .....	1228
5	Hours of Meeting—Variation.....	1230
6	Trade Practices Legislation Amendment Bill (No. 1) 2005.....	1230
7	Questions .....	1230
8	Foreign Affairs—Bali—Terrorist Attacks—Anniversary .....	1230
9	Acting Government Whip—Appointment.....	1230
10	Questions on Notice—Answers and Explanation.....	1231
11	Industrial Relations—Proposed Changes—Answers to Questions .....	1231
12	Petition.....	1231
13	Notices.....	1231
14	Treaties—Joint Standing Committee—Leave to Meet During Sitting.....	1234
15	Legal and Constitutional References Committee—Leave to Meet During Sitting.....	1234
16	Legal and Constitutional Legislation Committee—Extension of Time to Report .....	1234
17	Finance and Public Administration References Committee—Extension of Time to Report .....	1234
18	Environment—Fisheries Management.....	1234
19	Taxation.....	1235
20	Finance and Public Administration References Committee—Extension of Time to Report .....	1235
21	Education—Voluntary Student Unionism—Proposed Order for Production of Documents .....	1236
22	Environment—Kurnell Peninsula—Proposed Desalination Plant .....	1237
23	Foreign Affairs—Mr David Hicks .....	1237
24	Environment—Murray River.....	1237
25	Australian Crime Commission—Joint Statutory Committee—Leave to Meet During Sitzings .....	1238

26	Health—Mental Illness .....	1238
27	Parliamentary Service Commissioner—Report for 2004-05—Document.....	1239
28	Economics Legislation Committee—Additional Information—Additional Estimates 2004-05 .....	1239
29	Foreign Affairs, Defence and Trade—Joint Standing Committee—Report— Review of the Defence Annual Report 2003-04 .....	1239
30	Foreign Affairs, Defence and Trade—Joint Standing Committee— Document—Australia’s Defence Relations with the United States .....	1240
31	Foreign Affairs, Defence and Trade—Joint Standing Committee—Report— Review of the Defence Annual Report 2003-04—Consideration .....	1240
32	Foreign Affairs, Defence and Trade—Joint Standing Committee— Document—Australia’s Human Rights Dialogue Process .....	1240
33	Documents.....	1240
34	Committees—Changes in Membership.....	1241
35	Health Insurance Amendment (Medicare Safety-nets) Bill 2005.....	1241
36	Rural and Regional Affairs and Transport References Committee— Proposed Reference.....	1242
37	Legislation—Family Impact Statements—Statement by Leave.....	1242
38	Trade Practices Legislation Amendment Bill (No. 1) 2005.....	1242
39	Notice .....	1257
40	Adjournment .....	1257
41	Attendance.....	1258

**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 GOVERNMENT DOCUMENTS**

The following government documents were tabled:

- Attorney-General's Department—Report for 2004-05.
- Australian Competition and Consumer Commission—Report for 2004-05.
- Australian Electoral Commission—  
Election 2004—Funding and disclosure report.  
Report for 2004-05.
- Australian Film Commission—Report for 2004-05.
- Australian Film, Television and Radio School—Report for 2004-05.
- Australian Strategic Policy Institute Limited—Report for 2004-05.
- Australian War Memorial—Report for 2004-05.
- Bundanon Trust—Report for 2004-05.
- Coal Mining Industry (Long Service Leave Funding) Corporation—Report for 2004-05.
- Commonwealth Grants Commission—Report for 2004-05.
- Dairy Produce Act 1986*—Funding contract with Dairy Australia Limited—Report for 2003-04.
- Department of the Prime Minister and Cabinet—Report for 2004-05.
- Department of Veterans' Affairs—Data-matching program—Report on progress 2004-05.
- Employment Advocate—Report for 2004-05.
- Export Finance and Insurance Corporation (EFIC)—Report for 2004-05.
- Family Law Council—  
Report for 2004-05.  
Report for 2004-05—Corrigendum.
- Housing Assistance Act 1996*—Report for 2003-04 on the operation of the 2003 Commonwealth-State Housing Agreement.
- National Competition Council—Report for 2004-05.
- National Offshore Petroleum Safety Authority and National Offshore Petroleum Safety Authority Board—Reports for the period 1 January to 30 June 2005.
- National Water Commission—Report for the period 17 December 2004 to 30 June 2005.
- NetAlert Limited—Report for 2004-05.
- Northern Territory Fisheries Joint Authority—Report for 2002-03.
- Public Service Commissioner—Report for 2004-05, together with the report of the Merit Protection Commissioner.
- Repatriation Commission, Military Rehabilitation and Compensation Commission, Department of Veterans' Affairs and the National Treatment Monitoring Committee—Reports for 2004-05.

Treaties—*Multilateral*—Text, together with national interest analysis and annexures—

Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, done at New York on 25 May 2000.

### 3 SELECTION OF BILLS—STANDING COMMITTEE—MEMBERSHIP

*Leave refused:* The Minister for Justice and Customs (Senator Ellison) sought leave to move a motion relating to the membership of the Selection of Bills Committee.

An objection was raised and leave was not granted.

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

*Leave refused:* The Minister for Justice and Customs (Senator Ellison) sought leave to move a motion relating to the hours of meeting and routine of business for today.

An objection was raised and leave was not granted.

*Suspension of standing orders:* Senator Ellison, at the request of the Leader of the Government in the Senate (Senator Hill) and pursuant to contingent notice, moved—That so much of the standing orders be suspended as would prevent Senator Hill moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion to vary the hours of meeting and routine of business for today.

Debate ensued.

Question put.

The Senate divided—

#### AYES, 36

Senators—

Abetz	Eggleston (Teller)	Johnston	Nash
Adams	Ellison	Joyce	Parry
Barnett	Ferguson	Kemp	Patterson
Boswell	Fielding	Lightfoot	Ronaldson
Brandis	Fierravanti-Wells	Macdonald, Ian	Santoro
Calvert	Fifield	Macdonald, Sandy	Scullion
Chapman	Heffernan	Mason	Trood
Colbeck	Hill	McGauran	Vanstone
Coonan	Humphries	Minchin	Watson

#### NOES, 32

Senators—

Allison	Crossin	Lundy	Polley
Bartlett	Evans	Marshall	Siewert
Bishop	Faulkner	McEwen	Stephens
Brown, Bob	Hogg	McLucas	Sterle
Brown, Carol	Hurley	Milne	Stott Despoja
Campbell, G (Teller)	Hutchins	Moore	Webber
Carr	Kirk	Nettle	Wong
Conroy	Ludwig	O'Brien	Wortley

Question agreed to.

Senator Ellison, at the request of Senator Hill, moved—That a motion to vary the hours of meeting and routine of business for today may be moved immediately and have precedence over all other business today till determined.

*Closure:* Senator Ellison moved—That the question be now put.

Question—That the question be now put—put.

The Senate divided—

AYES, 36

Senators—

Abetz	Eggleston (Teller)	Johnston	Nash
Adams	Ellison	Joyce	Parry
Barnett	Ferguson	Kemp	Patterson
Boswell	Fielding	Lightfoot	Ronaldson
Brandis	Fierravanti-Wells	Macdonald, Ian	Santoro
Calvert	Fifield	Macdonald, Sandy	Scullion
Chapman	Heffernan	Mason	Troeth
Colbeck	Hill	McGauran	Trood
Coonan	Humphries	Minchin	Watson

NOES, 32

Senators—

Allison	Crossin	Lundy	Polley
Bartlett	Evans	Marshall	Siewert
Bishop	Faulkner	McEwen	Stephens
Brown, Bob	Hogg	McLucas	Sterle
Brown, Carol	Hurley	Milne	Stott Despoja
Campbell, G (Teller)	Hutchins	Moore	Webber
Carr	Kirk	Nettle	Wong
Conroy	Ludwig	O'Brien	Wortley

Question agreed to.

Question—That the motion to vary the hours of meeting and routine of business for today may be moved immediately and have precedence over all other business today till determined be agreed to—put and passed.

Senator Ellison moved—That, on Tuesday, 11 October 2005:

- (a) the hours of meeting shall be 12.30 pm to 6.30 pm, and 7.30 pm to 11.40 pm;
- (b) the routine of business from 7.30 pm shall be government business order of the day no. 1 (Trade Practices Legislation Amendment Bill (No. 1) 2005); and
- (c) the question for the adjournment of the Senate shall be proposed at 11 pm.

*Closure:* Senator Ellison moved—That the question be now put.

Question—That the question be now put—put.

The Senate divided—

AYES, 36

Senators—

Abetz	Eggleston (Teller)	Johnston	Nash
Adams	Ellison	Joyce	Parry
Barnett	Ferguson	Kemp	Patterson
Boswell	Fielding	Lightfoot	Ronaldson
Brandis	Fierravanti-Wells	Macdonald, Ian	Santoro
Calvert	Fifield	Macdonald, Sandy	Scullion
Chapman	Heffernan	Mason	Troeth
Colbeck	Hill	McGauran	Trood
Coonan	Humphries	Minchin	Watson

## NOES, 32

## Senators—

Allison	Crossin	Lundy	Polley
Bartlett	Evans	Marshall	Siewert
Bishop	Faulkner	McEwen	Stephens
Brown, Bob	Hogg	McLucas	Sterle
Brown, Carol	Hurley	Milne	Stott Despoja
Campbell, G (Teller)	Hutchins	Moore	Webber
Carr	Kirk	Nettle	Wong
Conroy	Ludwig	O'Brien	Wortley

Question agreed to.

Question—That the motion to vary the hours of meeting and routine of business for today be agreed to—put and passed.

#### 5 HOURS OF MEETING—VARIATION

The Minister for the Arts and Sport (Senator Kemp), at the request of the Minister for Justice and Customs (Senator Ellison) and pursuant to notice, moved government business notice of motion no. 1—That, on Wednesday, 12 October 2005, the Senate meet at 10 am, to enable senators to attend a commemorative service honouring the victims of the October 2002 terrorists attacks in Bali.

Question put and passed.

#### 6 TRADE PRACTICES LEGISLATION AMENDMENT BILL (NO. 1) 2005

Order of the day read for the adjourned debate on the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan)—That this bill be now read a second time.

Debate resumed.

*At 2 pm:* Debate was interrupted.

#### 7 QUESTIONS

*Point of order:* The Leader of the Opposition in the Senate (Senator Evans) raised a point of order concerning the requirement for relevance in answers to questions. The President made a statement concerning the matter.

---

Questions without notice were answered.

#### 8 FOREIGN AFFAIRS—BALI—TERRORIST ATTACKS—ANNIVERSARY

The Leader of the Government in the Senate (Senator Hill), by leave, informed the Senate of the arrangements for a memorial service to be held on 12 October 2005 for the victims of terrorist attacks in Bali in October 2002.

#### 9 ACTING GOVERNMENT WHIP—APPOINTMENT

The Leader of the Government in the Senate (Senator Hill), by leave, informed the Senate of the appointment of Senator Eggleston as acting Government Whip.

**10 QUESTIONS ON NOTICE—ANSWERS AND EXPLANATION**

Senator Bishop, pursuant to standing order 74, asked the Minister for Defence (Senator Hill) for an explanation of answers not being provided to the following questions on notice:

No. 167 (notice given 8 December 2004)

No. 554 (notice given 20 April 2005)

No. 557 (notice given 20 April 2005)

No. 1065 (notice given 8 August 2005)

No. 1088 (notice given 16 August 2005)

No. 1095 (notice given 18 August 2005)

No. 1096 (notice given 18 August 2005)

No. 1097 (notice given 18 August 2005).

Senator Hill indicated that answers would be provided.

**11 INDUSTRIAL RELATIONS—PROPOSED CHANGES—ANSWERS TO QUESTIONS**

Senator Bishop moved—That the Senate take note of the answers given by the Special Minister of State (Senator Abetz) to questions without notice asked today relating to proposed changes to industrial relations.

Debate ensued.

Question put and passed.

Senator Murray moved—That the Senate take note of the answer given by the Special Minister of State (Senator Abetz) to a question without notice asked by the Leader of the Australian Democrats (Senator Allison) today relating to proposed changes to industrial relations.

Question put and passed.

**12 PETITION**

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

From 900 petitioners, requesting that the Senate call on the Government to formally request assistance to fully account for Australian servicemen not recovered from Vietnam.

**13 NOTICES**

*Notices of motion:*

The Chair of the Employment, Workplace Relations and Education References Committee (Senator Marshall): To move on the next day of sitting—That the time for the presentation of the report of the Employment, Workplace Relations and Education References Committee on industrial agreements be extended to 30 November 2005. (*general business notice of motion no. 286*)

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

(a) notes, during Mental Health Week 2005, that:

- (i) a recent report, commissioned by Carers Australia and undertaken by Access Economics, found that 9 per cent of those receiving informal care in the community are suffering from a psychological illness, and that this equates to approximately 350 000 people,

- (ii) the cost of informal care provided to people with mental illness is estimated at \$2 745 000 000 per year, and
  - (iii) the Access Economics report states that carers of people with a psychological disability were among the most likely to need additional support in their caring activities; and
- (b) calls on the Government to:
- (i) recognise the significant cost savings made to the economy by those who provide informal care to people with a mental illness, and
  - (ii) provide greater recognition in government policy of the carers of those with mental illnesses. (*general business notice of motion no. 287*)

Senator Siewert: To move on 13 October 2005—That the Senate—

- (a) notes:
- (i) that illegal shark fishing is a major factor driving illegal fishing in Australian waters,
  - (ii) that most shark species are effectively extinct in the Indonesian archipelago and that this increases the pressure on Australian shark fisheries, and
  - (iii) with concern, the declining shark numbers in Australian waters; and
- (b) calls on the Government to demonstrate leadership by taking action to protect sharks in Australian waters and address illegal trade by:
- (i) banning the export of shark fin products from Australia,
  - (ii) initiating the development of a international plan of action for sharks,
  - (iii) removing the exemption under the *Environment Protection and Biodiversity Conservation Act 1999* of Western Australian fisheries that target large sharks for finning, and banning long-lining in western and southern fisheries,
  - (iv) closing tropical shark fisheries until numbers return to sustainable levels, and
  - (v) providing more resources for the Australian Fisheries Management Authority in joint authority fisheries in the north in order to ensure that onshore and offshore inspections are being carried out by fisheries officers and not the Northern Territory Police. (*general business notice of motion no. 288*)

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

- (a) notes that:
- (i) child care waiting lists for infants under 2 years of age have grown alarmingly,
  - (ii) 1 935 families cannot access child care in the City of Port Phillip, Victoria, an increase of 20 per cent since 2004,
  - (iii) more than 13 000 children across Victoria and over 174 000 Australia-wide also need a child care place and cannot get one, and
  - (iv) these shortages translate to approximately 160 000 women who want to work but cannot because they are unable to access child care;
- (b) urges the Government to recognise through its child care funding that the marketplace is not meeting the needs of these families because of the higher cost of caring for children under 2 years of age; and



- (c) requests the Government to:
- (i) further reduce the fee gap,
  - (ii) increase capital support for community-based centres so parents can choose the centre in their local area and to meet the unmet needs that create long waiting lists,
  - (iii) increase subsidies for 0-2 year olds and children with special needs,
  - (iv) support wage increases to child care workers, and
  - (v) work with state and local governments to put in place:
    - (A) planning controls to ensure centres and services are equitably distributed, and
    - (B) enforce national child care standards, including the requirement of pre-school. (*general business notice of motion no. 289*)

The Minister for Defence (Senator Hill): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend legislation relating to defence, and for related purposes. ***Defence Legislation Amendment Bill (No. 2) 2005***.

The Minister for the Environment and Heritage (Senator Ian Campbell): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend legislation relating to Aboriginal and Torres Strait Islander heritage protection, and for related purposes. ***Aboriginal and Torres Strait Islander Heritage Protection Amendment Bill 2005***.

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

No. 1—That the Health Insurance (Obstetric Item 15999) Determination HS/02/2005, made under subsection 3C(1) of the *Health Insurance Act 1973*, be disallowed.

No. 2—That Variation to Licence Area Plan for Scottsdale Radio – No. 1 of 2005, made under subsection 26(2) of the *Broadcasting Services Act 1992*, be disallowed.

Senator Watson, 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 Watson), pursuant to standing order 78, gave notice of his intention, at the giving of notices on the next day of sitting, to withdraw notices of motion standing in his name as follows:

Business of the Senate notice of motion no. 1 for the next day of sitting for the disallowance of the Income Tax Assessment Amendment Regulations 2005 (No. 2), as contained in Select Legislative Instrument 2005 No. 75 and made under the *Income Tax Assessment Act 1997*.

Business of the Senate notices of motion nos 1 to 4 for 5 sitting days after today for the disallowance of the following instruments:

Crimes Amendment Regulations 2005 (No. 1), as contained in Select Legislative Instrument 2005 No. 81 and made under the *Crimes Act 1914*.

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [FACS], dated 26 April 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [DEWR], dated 29 April 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [DEST], dated 17 May 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

Business of the Senate notice of motion no. 5 for 8 sitting days after today for the disallowance of the Student Assistance Amendment Regulations 2005 (No. 1), as contained in Select Legislative Instrument 2005 No. 123 and made under the *Student Assistance Act 1973*.

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

**14 TREATIES—JOINT STANDING COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator Eggleston, by leave and on behalf of the Joint Standing Committee on Treaties, moved—That the Joint Standing Committee on Treaties be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, from 8 pm.

Question put and passed.

**15 LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator George Campbell, by leave and at the request of the Chair of the Legal and Constitutional References Committee (Senator Crossin), moved—That the Legal and Constitutional References Committee be authorised to hold a public meeting during the sitting of the Senate today, from 7 pm, to take evidence for the committee's inquiry into the administration of the Migration Act.

Question put and passed.

**16 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—EXTENSION OF TIME TO REPORT**

Senator George Campbell, at the request of the Deputy Chair of the Legal and Constitutional Legislation Committee (Senator Crossin) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 280—That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the provisions of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 be extended to the first sitting day in 2006.

Question put and passed.

**17 FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT**

The Deputy Chair of the Finance and Public Administration References Committee (Senator Watson), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 279—That the time for the presentation of the report of the Finance and Public Administration References Committee on government advertising be extended to 1 December 2005.

Question put and passed.

**18 ENVIRONMENT—FISHERIES MANAGEMENT**

Senator Siewert amended general business notice of motion no. 259 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes the damage that may be caused to deep sea coral and sponge communities by destructive fishing practices;

- (b) recognises that fishing states are obliged to either join or cooperate with regional fisheries management organisations and states that do not do so should refrain from fishing for the species in the areas over which such organisations have competence;
- (c) acknowledges that some species living on and around seamounts in the south east of Australia require additional protection and therefore, some fishing methods are not permitted in identified areas;
- (d) commends the Government for taking steps, on a case by case basis and based on science, toward protecting some deep sea coral and sponge ecosystems inside Australia's exclusive economic zone; and
- (e) supports the development and implementation of an effective, legally-binding governance framework to protect deep sea biodiversity in the high seas area and to conserve and manage bottom fisheries of the high seas consistent with the United Nations (UN) Convention on the Law of the Sea and the 2004 UN General Assembly resolution 59/25.

Question put and passed.

## 19 TAXATION

Senator Bob Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 277—That the Senate considers that any changes to the tax deductibility status for non-government organisations should be applied consistently across the board, specifically so that organisations representing the business community are treated in the same manner as community-based organisations.

Question put.

The Senate divided—

### AYES, 8

Senators—

Allison	Brown, Bob	Murray	Siewert (Teller)
Bartlett	Milne	Nettle	Stott Despoja

### NOES, 43

Senators—

Adams	Fierravanti-Wells	Ludwig	Ronaldson
Barnett	Fifield	Lundy	Scullion
Bishop	Hogg	Marshall	Stephens
Brandis	Humphries	Mason	Sterle
Brown, Carol	Hurley	McEwen	Troeth
Campbell, George	Hutchins	McLucas	Trood
Carr	Johnston	Moore	Watson
Chapman	Joyce	Nash	Webber
Crossin	Kemp	O'Brien	Wong
Eggleston (Teller)	Kirk	Parry	Wortley
Faulkner	Lightfoot	Polley	

Question negatived.

## 20 FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT

*Leave refused:* Senator Eggleston sought leave to have the question on general business notice of motion no. 279 relating to an extension of time for the Finance and Public Administration References Committee to report put again (*see entry no. 17*).

*Statement by leave:* Senator Carr, by leave, made a statement relating to the matter.  
An objection was raised and leave was not granted.

**21 EDUCATION—VOLUNTARY STUDENT UNIONISM—PROPOSED ORDER FOR PRODUCTION OF DOCUMENTS**

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 284—That there be laid on the table by the Minister representing the Minister for Education, Science and Training, no later than Thursday, 13 October 2005, copies of the departmental documents on the three options for voluntary student unionism.

Senator Wong, by leave, moved the following amendment:

At the end of the motion, add “including:

- (a) the departmental documents for all three options for voluntary student unionism (including, but not limited to, that document identified as ‘c37’);
- (b) the letter from the Minister for Education, Science and Training (Mr Nelson) to the Prime Minister, dated 13 May 2005 (identified as ‘c8’); and
- (c) ministerial talking points, dated 7 March 2005 (identified as ‘c36’).”

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

Main question, as amended, put.

The Senate divided—

AYES, 32

Senators—

Bartlett	Evans	Lundy	Polley
Bishop	Faulkner	Marshall	Siewert
Brown, Bob	Fielding	McEwen	Stephens
Brown, Carol	Hogg	McLucas	Sterle
Campbell, G (Teller)	Hurley	Milne	Stott Despoja
Carr	Hutchins	Moore	Webber
Conroy	Kirk	Murray	Wong
Crossin	Ludwig	Nettle	Wortley

NOES, 34

Senators—

Abetz	Eggleston (Teller)	Lightfoot	Ronaldson
Adams	Ferguson	Macdonald, Ian	Santoro
Barnett	Fierravanti-Wells	Macdonald, Sandy	Scullion
Boswell	Fifield	Mason	Troeth
Brandis	Heffernan	McGauran	Trood
Calvert	Humphries	Minchin	Vanstone
Campbell, Ian	Johnston	Nash	Watson
Chapman	Joyce	Parry	
Coonan	Kemp	Patterson	

Question negatived.

**22 ENVIRONMENT—KURNELL PENINSULA—PROPOSED DESALINATION PLANT**

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 285—That the Senate—

- (a) congratulates the Federal Government for extending the time for submissions on whether the proposed New South Wales desalination plant on the Kurnell Peninsula requires full assessment under the *Environment Protection and Biodiversity Conservation Act 1999*;
- (b) notes that the Federal Government will consider the public submissions in determining whether the proposed New South Wales desalination plant on the Kurnell Peninsula requires full assessment and approval under the Act; and
- (c) calls on the New South Wales Government to ensure that proper and thorough environmental assessments are undertaken on the proposal before construction proceeds.

*Statements by leave:* Senators George Campbell and Nettle, by leave, made statements relating to the motion.

Question put and passed.

**23 FOREIGN AFFAIRS—MR DAVID HICKS**

Senator Stott Despoja, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 276—That the Senate notes:

- (a) the decision of the United States of America (US) to commence military commission proceedings against Mr David Hicks;
- (b) that Mr Hicks will be the first Guantanamo Bay detainee to be tried by these military commissions;
- (c) the comments by the United Kingdom's Attorney General, the Right Honourable Lord Goldsmith, that 'the United Kingdom has been unable to accept that the US military tribunals ... offer sufficient guarantees of a fair trial in accordance with international standards'; and
- (d) the decision of Mr Hicks to apply for British citizenship.

Question put and passed.

**24 ENVIRONMENT—MURRAY RIVER**

Senator Siewert amended general business notice of motion no. 271 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes:
  - (i) that the environmental health of the Coorong, Lower Lakes and Murray Mouth in South Australia has declined and this area has been identified through the Living Murray process as requiring additional environmental flows, and according to the Lower Lakes, Coorong and Murray Mouth Asset Environmental Management Plan:
    - (A) there is evidence that there are changes in the distribution and abundance of invertebrates on the mudflats,
    - (B) salinity levels may be at an historically high level in areas such as the South Lagoon,
    - (C) there is evidence of decline in native fish populations and one species of fish is locally extinct, and

- (D) migratory waterbird populations have dropped from a peak of over 234 000 in 1982 to an average of approximately 75 000 to date,
- (ii) that Professor Peter Cullen, a member of the Wentworth Group of Concerned Scientists and a commissioner on the National Water Commission, states that it is time for governments to start buying water on the open market to boost water flows,
- (iii) Professor Cullen's statement that there are plenty of funds available for cost-effective infrastructure that would return appropriate volumes of water, but that it seems we do not have the skills in some agencies to identify them, and
- (iv) the diverse interests supporting the purchase of water on the open market, including the newly established National Floodplain Graziers Association, the South Australian Member of The Nationals and the Minister for the River Murray, Ms Karlene Maywald, and the New South Wales Minister for the Environment, Mr Bob Debus;
- (d) recognises market options as a way of meeting environmental flow targets; and
- (e) calls on:
  - (i) all governments involved to address the challenges facing the Murray River and to consider the full range of mechanisms available including market options, and
  - (ii) the state governments to bring forward infrastructure and water efficiency products for investment under the Living Murray initiative as a matter of priority.

Question put and passed.

**25 AUSTRALIAN CRIME COMMISSION—JOINT STATUTORY COMMITTEE—LEAVE TO MEET DURING SITTINGS**

Senator Eggleston, at the request of the Chair of the Parliamentary Joint Committee on the Australian Crime Commission (Senator Santoro) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 278—That the Parliamentary Joint Committee on the Australian Crime Commission be authorised to hold public meetings during the sittings of the Senate, to take evidence for the committee's review of the *Australian Crime Commission Act 2002*, on the following days:

Tuesday, 11 October 2005, from 4 pm to 7 pm

Thursday, 13 October 2005, from 9.30 am to 11.30 am.

Question put and passed.

**26 HEALTH—MENTAL ILLNESS**

Senator George Campbell, at the request of Senator Stephens, amended general business notice of motion no. 282 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes that:
  - (i) Sunday, 9 October 2005 marked the beginning of National Mental Health Week, the theme for 2005 being 'Family, Friends and Intimate Relationships',
  - (ii) Monday, 10 October 2005 is World Mental Health Day, the theme for 2005 being 'Mental and Physical Health Across the Life Span',

- (iii) one in five Australians will, at some time in their lives, experience some form of mental illness,
  - (iv) mental illness manifests itself in many forms including depression, anxiety, schizophrenia, bipolar disorder and eating disorders,
  - (v) Sane Australia report that up to 12 per cent of people with severe mental disorders, such as schizophrenia, bipolar disorder and other forms of psychosis, eventually end their lives as compared with about one per cent for the whole population,
  - (vi) most people with mental illness recover well and are able to lead fulfilling lives in the community when they receive appropriate ongoing treatment and support,
  - (vii) only about half of those affected by mental illness actually receive treatment, and
  - (viii) in Australia there are hundreds of mental health organisations, health professionals and carers providing assistance and treatment to sufferers; and
- (b) urges the Federal Government to:
- (i) recognise that mental health is not something separate from the health care agenda, but an integral part of it,
  - (ii) show national leadership and drive a real national mental health strategy, and
  - (iii) improve those mental health services for which it has direct responsibility.

Question put and passed.

**27 PARLIAMENTARY SERVICE COMMISSIONER—REPORT FOR 2004-05—DOCUMENT**

The President tabled the following document:

Parliamentary Service Commissioner—Report for 2004-05.

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

**28 ECONOMICS LEGISLATION COMMITTEE—ADDITIONAL INFORMATION—  
ADDITIONAL ESTIMATES 2004-05**

Senator Eggleston, at the request of the Chair of the Economics Legislation Committee (Senator Brandis), tabled additional information received by the committee (Additional estimates 2004-05—2 vols).

**29 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—  
REPORT—REVIEW OF THE DEFENCE ANNUAL REPORT 2003-04**

Senator Eggleston, at the request of the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade (Senator Ferguson), tabled the following report:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Review of the Defence annual report 2003-04—Report, dated September 2005.

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

Question put and passed.

**30 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—  
DOCUMENT—AUSTRALIA’S DEFENCE RELATIONS WITH THE UNITED STATES**

Senator Eggleston, at the request of the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade (Senator Ferguson), tabled the following document:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Australia’s defence relations with the United States—Report of the delegation to the United States, 28 June to 13 July 2005, dated September 2005.

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

Debate ensued.

Question put and passed.

**31 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—  
REPORT—REVIEW OF THE DEFENCE ANNUAL REPORT 2003-04—CONSIDERATION**

Senator Bishop, by leave, moved—That the Senate take note of the report tabled earlier today (*see entry no. 29*).

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

**32 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—  
DOCUMENT—AUSTRALIA’S HUMAN RIGHTS DIALOGUE PROCESS**

Senator Lightfoot, at the request of the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade (Senator Ferguson), tabled the following document:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Australia’s human rights dialogue process—Qualifying comments by Senator Brian Harradine.

**33 DOCUMENTS**

The following documents were tabled by the Clerk:

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

Civil Aviation Act—Select Legislative Instrument 2005 No. 224—Civil Aviation (Fees) Amendment Regulations 2005 (No. 1) [F2005L03043]\*.

Corporations Act—Accounting Standard AASB 2005-11—Amendments to Australian Accounting Standards [F2005L03038]\*.

Customs Act—

CEO Instruments of Approval Nos—

85 of 2005 [F2005L03006]\*.

104 of 2005 [F2005L03039]\*.

Customs By-Laws Nos—

0540003 [F2005L03056]\*.

0540004 [F2005L03057]\*.

Tariff Concession Orders—

0508788 [F2005L03047]\*.

0509097 [F2005L03048]\*.

0509609 [F2005L03049]\*.

0509610 [F2005L03050]\*.

0509673 [F2005L03051]\*.

0509758 [F2005L03052]\*.

0509811 [F2005L03053]\*.

0509813 [F2005L03054]\*.



Health Insurance Act—Select Legislative Instrument 2005 No. 219—Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2005 (No. 3) [F2005L03034]\*.

Indigenous Education (Targeted Assistance) Act—Select Legislative Instrument 2005 No. 215—Indigenous Education (Targeted Assistance) Amendment Regulations 2005 (No. 1) [F2005L03011]\*.

Judiciary Act—High Court of Australia—Rule of Court, as of 30 August 2005 [F2005L02536] [*tabled on 13 September 2005*—Explanatory statement.

Maritime Transport and Offshore Facilities Security Act—Select Legislative Instrument 2005 No. 225—Maritime Transport and Offshore Facilities Security Amendment Regulations 2005 (No. 3) [F2005L03031]\*.

Migration Act—Select Legislative Instrument 2005 No. 221—Migration Amendment Regulations 2005 (No. 8) [F2005L03037]\*.

Schools Assistance (Learning Together — Achievement Through Choice and Opportunity) Act—Select Legislative Instrument 2005 No. 216—Schools Assistance (Learning Together — Achievement Through Choice and Opportunity) Amendment Regulations 2005 (No. 1) [F2005L03010]\*.

Skilling Australia's Workforce (Repeal and Transitional Provisions) Act—Select Legislative Instrument 2005 No. 217—Skilling Australia's Workforce (Repeal and Transitional Provisions) Regulations 2005 [F2005L03012]\*.

\* Explanatory statement tabled with legislative instrument.

#### 34 COMMITTEES—CHANGES IN MEMBERSHIP

The Acting Deputy President (Senator Watson) informed the Senate that the President had received letters requesting changes in the membership of various committees.

The Parliamentary Secretary (Trade) (Senator Sandy Macdonald), by leave, moved—That senators be discharged from and appointed to committees as follows:

##### **Community Affairs References Committee—**

Appointed—Substitute member: Senator Crossin to replace Senator Carol Brown for the committee's inquiry into petrol sniffing in remote Aboriginal communities

##### **Economics Legislation Committee—**

Appointed—Substitute member: Senator George Campbell to replace Senator Stephens from 15 October to 7 November 2005

##### **Employment, Workplace Relations and Education Legislation Committee—**

Appointed—Participating member: Senator Nash

##### **Environment, Communications, Information Technology and the Arts References Committee—**

Discharged—Senator Troeth

Appointed—Senator Adams.

Question put and passed.

#### 35 HEALTH INSURANCE AMENDMENT (MEDICARE SAFETY-NETS) BILL 2005

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

Message no. 226, dated 11 October 2005—A Bill for an Act to amend the *Health Insurance Act 1973*, and for related purposes.

The Parliamentary Secretary (Trade) (Senator Sandy Macdonald) 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 Sandy Macdonald 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.

**36 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—  
PROPOSED REFERENCE**

Senator Bob Brown, pursuant to notice, moved business of the Senate notice of motion no. 1—That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 1 December 2005:

- (a) the public and private commitments of the Prime Minister (Mr Howard) in his 2004 pre-election announcement on logging of old-growth forests in Tasmania, with particular reference to his commitments to the forestry division of the Construction, Forestry, Mining and Energy Union, its officers and related organisations; and
- (b) any relevant matters.

Debate ensued.

Question put.

The Senate divided—

**AYES, 8**

Senators—

Allison	Brown, Bob	Murray	Siewert (Teller)
Bartlett	Milne	Nettle	Stott Despoja

**NOES, 39**

Senators—

Adams	Hogg	McEwen	Stephens
Bishop	Humphries	McGauran (Teller)	Sterle
Brandis	Hurley	McLucas	Troeth
Brown, Carol	Hutchins	Moore	Trood
Crossin	Joyce	Nash	Vanstone
Evans	Kirk	O'Brien	Watson
Fielding	Lightfoot	Parry	Webber
Fierravanti-Wells	Ludwig	Polley	Wong
Fifield	Lundy	Ronaldson	Wortley
Heffernan	Mason	Scullion	

Question negatived.

**37 LEGISLATION—FAMILY IMPACT STATEMENTS—STATEMENT BY LEAVE**

Senator Bob Brown, by leave, made a statement relating to remarks he made during a debate on 6 October 2005.

**38 TRADE PRACTICES LEGISLATION AMENDMENT BILL (NO. 1) 2005**

Order of the day read for the adjourned debate on the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

*Proposed division of bill:* The Leader of the Family First Party (Senator Fielding), pursuant to contingent notice, moved—That it be an instruction to the committee of the whole that:

- (1) The Trade Practices Legislation Amendment Bill (No. 1) 2005 be divided into two bills, as follows:
  - (a) a Bill for an Act to amend the *Trade Practices Act 1974*, to provide for merger clearances and authorisations and for other purposes; and
  - (b) a Bill for an Act to amend the *Trade Practices Act 1974*, and for other purposes.
- (2) The first bill consist of the enacting words, clauses 1, 2 and 3 and Schedule 1 of the original bill; and that the second bill consist of Schedules 2 to 12 of the original bill.
- (3) The following amendments be made to the first bill:
  - (a) title, amend the title as shown in paragraph (1)(a) of this order; and
  - (b) clause 2, page 2, omit table items 3 to 6 inclusive.
- (4) The following amendments be made to the second bill:
  - (a) title, insert the title as shown in paragraph (1)(b) of this order;
  - (b) after the title, insert the words of enactment;
  - (c) after the words of enactment, insert the following clauses:

#### **1 Short title**

This Act may be cited as the *Trade Practices Legislation Amendment Act (No. 2) 2005*.

#### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

#### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

; and (d) renumber the Schedules as Schedules 1 to 11.

Debate ensued.

Question—That the motion be agreed to—put.

The Senate divided—

AYES, 32

Senators—

Allison	Fielding	Marshall	Polley
Bartlett	Hogg	McEwen	Siewert
Bishop	Hurley	McLucas	Stephens
Brown, Bob	Hutchins	Milne	Sterle
Brown, Carol	Joyce	Moore	Stott Despoja
Campbell, George	Kirk	Murray	Webber (Teller)
Conroy	Ludwig	Nettle	Wong
Crossin	Lundy	O'Brien	Wortley

## NOES, 32

## Senators—

Abetz	Colbeck	Johnston	Patterson
Adams	Coonan	Kemp	Ronaldson
Barnett	Eggleston	Lightfoot	Santoro
Boswell	Ferguson	Macdonald, Ian	Scullion
Brandis	Fierravanti-Wells	Macdonald, Sandy	Troeth
Calvert	Fifield	McGauran (Teller)	Trood
Campbell, Ian	Hill	Nash	Vanstone
Chapman	Humphries	Parry	Watson

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

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

---

*In the committee*

Bill taken as a whole by leave.

---

*Explanatory memorandum:* The Special Minister of State (Senator Abetz) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

---

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

Schedule 1, item 6, page 4 (lines 1 and 2), omit the definition of *proceedings* in section 29P, substitute:

*proceedings* includes:

- (a) applications made to the Tribunal under Subdivision C of Division 3 of Part VII; and
- (b) applications made to the Tribunal under section 111 (about review of the Commission's decisions on merger clearances).

Schedule 1, items 7 and 8, page 4 (lines 3 to 13), omit the items, substitute:

**7 Section 39**

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

Note: The heading to section 39 is replaced by the heading "**President may give directions**".

**8 At the end of section 39**

Add:

- (2) The President may give directions to the Deputy Presidents in relation to the exercise by the Deputy Presidents of powers with respect to matters of procedure in proceedings before the Tribunal.

Note: Subsection 103(2) provides that any presidential member may exercise powers with respect to matters of procedure in proceedings before the Tribunal.

Schedule 1, item 27, page 12 (line 34), omit "make", substitute "give".

Schedule 1, item 27, page 15 (line 17), after “Commission”, insert “, within a specified period.”.

Schedule 1, item 27, page 15 (lines 20 to 23), omit section 95AK, substitute:

**95AK Commission may seek further information and consult others**

- (1) The Commission may give a person a written notice requesting the person to give the Commission, within a specified period, particular information relevant to making its determination on the application.
- (2) The Commission may consult with such persons as it considers reasonable and appropriate for the purposes of making its determination on the application.

Schedule 1, item 27, page 16 (lines 4 to 7), omit subsection 95AM(2), substitute:

- (2) In making its determination, the Commission must take into account:
  - (a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received within the period specified under paragraph 95AG(b); and
  - (b) any information received under section 95AJ within the period specified in the relevant notice under that section; and
  - (c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection; and
  - (d) any information obtained from consultations under subsection 95AK(2).
- (2A) In making its determination, the Commission may disregard:
  - (a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received after the period specified under paragraph 95AG(b); and
  - (b) any information received under section 95AJ after the period specified in the relevant notice under that section; and
  - (c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection.

Schedule 1, item 27, page 16 (line 22), omit “refused”, substitute “made a determination refusing”.

Schedule 1, item 27, page 18 (after line 12), after subsection 95AR(2), insert:

- (2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

Schedule 1, item 27, page 18 (line 28) to page 19 (line 3), omit subsection 95AR(5), substitute:

*Commission must make a determination on the application*

- (5) The Commission must make a determination in writing:
  - (a) varying the clearance; or
  - (b) refusing to vary the clearance.

The Commission must notify the applicant in writing of its determination and give written reasons for it.

- (5A) In making its determination, the Commission must take into account:
- (a) any submissions received within the period specified under subsection (4); and
  - (b) any information received under section 95AJ within the period specified in the relevant notice under that section (as that section applies because of subsection (11) of this section); and
  - (c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (11) of this section); and
  - (d) any information obtained from consultations under subsection 95AK(2) (as that subsection applies because of subsection (11) of this section).
- (5B) In making its determination, the Commission may disregard:
- (a) any submissions received after the period specified under subsection (4); and
  - (b) any information received under section 95AJ after the period specified in the relevant notice under that section (as that section applies because of subsection (11) of this section); and
  - (c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (11) of this section).

Schedule 1, item 27, page 19 (after line 9), after subsection 95AR(6), insert:

*Determination varying clearance may also vary clearance conditions*

- (6A) A determination varying a clearance may also vary the conditions (if any) of the clearance to take account of the variation of the clearance.

Schedule 1, item 27, page 19 (line 14), omit “refused”, substitute “made a determination refusing”.

Schedule 1, item 27, page 20 (after line 3), at the end of section 95AR, add:

*Powers of Commission*

- (11) The following sections apply in relation to an application for a minor variation of a clearance in the same way as they apply in relation to an application for a clearance:
- (a) section 95AJ (Commission may seek additional information from applicant);
  - (b) section 95AK (Commission may seek further information and consult others).

Schedule 1, item 27, page 20 (after line 17), after subsection 95AS(2), insert:

- (2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

Schedule 1, item 27, page 21 (lines 18 to 27), omit subsection 95AS(7), substitute:

*Commission must make a determination*

- (7) The Commission must make a determination in writing:

- (a) revoking the clearance, or revoking the clearance and substituting a new clearance for the one revoked; or
- (b) refusing to revoke the clearance.

The Commission must notify, in writing, the person to whom the clearance was granted of its determination and give written reasons for it.

- (7A) In making its determination, the Commission must take into account:
  - (a) any submissions invited under subsection (4) or (6) that are received within the period specified under that subsection; and
  - (b) any information received under section 95AJ within the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and
  - (c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section); and
  - (d) any information obtained from consultations under subsection 95AK(2) (as that subsection applies because of subsection (13) of this section).
- (7B) In making its determination, the Commission may disregard:
  - (a) any submissions invited under subsection (4) or (6) that are received after the period specified under that subsection; and
  - (b) any information received under section 95AJ after the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and
  - (c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section).

Schedule 1, item 27, page 22 (line 15), omit “refused”, substitute “made a determination refusing”.

Schedule 1, item 27, page 22 (after line 25), at the end of section 95AS, add:

*Powers of Commission*

- (13) The following sections apply in relation to an application for a revocation, or a revocation and substitution, of a clearance in the same way as they apply in relation to an application for a clearance:
  - (a) section 95AJ (Commission may seek additional information from applicant);
  - (b) section 95AK (Commission may seek further information and consult others).

*Substituted clearances*

- (14) The following sections apply in relation to a clearance substituted under this section in the same way as they apply in relation to a clearance granted under section 95AM:
  - (a) section 95AP (Clearance subject to conditions);
  - (b) section 95AQ (When clearance is in force).

Schedule 1, item 27, page 22 (line 31), omit “Note”, substitute “Note 1”.

Schedule 1, item 27, page 22 (after line 34), at the end of subsection 95AT(1), add:

Note 2: Division 2 of Part IX contains provisions about procedure and evidence that relate to proceedings before the Tribunal.

Schedule 1, item 27, page 23 (line 26), omit “make”, substitute “give”.

Schedule 1, item 27, page 26 (line 26), after “Tribunal”, insert “, within a specified period.”.

Schedule 1, item 27, page 26 (lines 28 to 31), omit section 95AZD, substitute:

**95AZD Tribunal may seek further information and consult others etc.**

- (1) The Tribunal may give a person a written notice requesting the person to give the Tribunal, within a specified period, particular information relevant to making its determination on the application.
- (2) The Tribunal may consult with such persons as it considers reasonable and appropriate for the purposes of making its determination on the application.
- (3) The Tribunal may disclose information excluded from the merger authorisation register under subsection 95AZA(3), (4) or (7) to such persons and on such terms as it considers reasonable and appropriate for the purposes of making its determination on the application.

Schedule 1, item 27, page 27 (after line 3), after section 95AZE, insert:

**95AZE A Tribunal must require Commission to give report**

For the purposes of determining the application, the member of the Tribunal presiding on the application must require the Commission to give a report to the Tribunal. The report must be:

- (a) in relation to the matters specified by that member; and
- (b) given within the period specified by that member.

Schedule 1, item 27, page 27 (after line 8), after section 95AZF, insert:

**95AZF A Commission may make enquiries**

The Commission may, for the purposes of complying with a requirement under section 95AZE A or 95AZF, make such enquiries as it considers reasonable and appropriate.

Schedule 1, item 27, page 27 (lines 16 to 19), omit subsection 95AZG(2), substitute:

- (2) In making its determination, the Tribunal must take into account:
  - (a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received within the period specified under paragraph 95AY(b); and
  - (b) any information received under section 95AZC within the period specified in the relevant notice under that section; and
  - (c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection; and
  - (d) any information obtained from consultations under subsection 95AZD(2); and
  - (e) the report given to it under section 95AZE A; and
  - (f) any information or report given to it under section 95AZF.
- (2A) In making its determination, the Tribunal may disregard:



- (a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received after the period specified under paragraph 95AY(b); and
- (b) any information received under section 95AZC after the period specified in the relevant notice under that section; and
- (c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection.

Schedule 1, item 27, page 29 (after line 24), after subsection 95AZL(2), insert:

- (2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

Schedule 1, item 27, page 30 (lines 12 to 19), omit subsection 95AZL(6), substitute:

*Tribunal must make a determination on the application*

- (6) The Tribunal must make a determination in writing:
  - (a) varying the authorisation; or
  - (b) refusing to vary the authorisation.

The Tribunal must notify the applicant in writing of its determination and give written reasons for it.
- (6A) In making its determination, the Tribunal must take into account:
  - (a) any submissions received within the period specified under subsection (5); and
  - (b) any information received under section 95AZC within the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and
  - (c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section); and
  - (d) any information obtained from consultations under subsection 95AZD(2) (as that subsection applies because of subsection (13) of this section); and
  - (e) the report given to it under section 95AZE A (as that section applies because of subsection (13) of this section); and
  - (f) any information or report given to it under section 95AZF (as that section applies because of subsection (13) of this section).
- (6B) In making its determination, the Tribunal may disregard:
  - (a) any submissions received after the period specified under subsection (5); and
  - (b) any information received under section 95AZC after the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and
  - (c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section).

Schedule 1, item 27, page 30 (after line 25), after subsection 95AZL(7), insert:

*Determination varying authorisation may also vary authorisation conditions*

- (7A) A determination varying an authorisation may also vary the conditions (if any) of the authorisation to take account of the variation of the authorisation.

Schedule 1, item 27, page 31 (line 29), omit paragraph 95AZL(13)(a).

Schedule 1, item 27, page 31 (line 32), omit “consult others”, substitute “seek further information and consult others etc.”.

Schedule 1, item 27, page 31 (after line 32), after paragraph 95AZL(13)(c), insert:

(ca) section 95AZE A (Tribunal must require Commission to give report);

Schedule 1, item 27, page 31 (line 33), at the end of subsection 95AZL(13), add:

; (e) section 95AZF A (Commission may make enquiries).

Schedule 1, item 27, page 32 (after line 15), after subsection 95AZM(2), insert:

- (2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

Schedule 1, item 27, page 33 (lines 24 to 33), omit subsection 95AZM(8), substitute:

*Tribunal must make a determination*

- (8) The Tribunal must make a determination in writing:

- (a) revoking the authorisation, or revoking the authorisation and substituting a new authorisation; or  
(b) refusing to revoke the authorisation.

The Tribunal must notify, in writing, the person to whom the authorisation was granted of its determination and give written reasons for it.

- (8A) In making its determination, the Tribunal must take into account:

- (a) any submissions invited under subsection (5) or (7) that are received within the period specified under that subsection; and  
(b) any information received under section 95AZC within the period specified in the relevant notice under that section (as that section applies because of subsection (15) of this section); and  
(c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (15) of this section); and  
(d) any information obtained from consultations under subsection 95AZD(2) (as that subsection applies because of subsection (15) of this section); and  
(e) the report given to it under section 95AZE A (as that section applies because of subsection (15) of this section); and  
(f) any information or report given to it under section 95AZF (as that section applies because of subsection (15) of this section).

- (8B) In making its determination, the Tribunal may disregard:

- (a) any submissions invited under subsection (5) or (7) that are received after the period specified under that subsection; and
- (b) any information received under section 95AZC after the period specified in the relevant notice under that section (as that section applies because of subsection (15) of this section); and
- (c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (15) of this section).

Schedule 1, item 27, page 35 (line 10), omit paragraph 95AZM(15)(a).

Schedule 1, item 27, page 35 (line 13), omit “consult others”, substitute “seek further information and consult others etc.”.

Schedule 1, item 27, page 35 (after line 13), after paragraph 95AZM(15)(c), insert:

- (ca) section 95AZE (Tribunal must require Commission to give report);

Schedule 1, item 27, page 35 (line 14), at the end of subsection 95AZM(15), add:

- ; (e) section 95AZFA (Commission may make enquiries).

Schedule 1, item 27, page 35 (after line 14), at the end of section 95AZM, add:

*Substituted authorisations*

- (16) The following sections apply in relation to an authorisation substituted under this section in the same way as they apply in relation to an authorisation granted under section 95AZG:

- (a) section 95AZJ (Authorisation subject to conditions);
- (b) section 95AZK (When authorisation is in force).

Schedule 1, items 33 and 34, page 36 (lines 12 to 20), omit the items, substitute:

**33 Before section 103**

Insert:

**102A Definition**

In this Part:

*proceedings* includes:

- (a) applications made to the Tribunal under Subdivision C of Division 3 of Part VII; and
- (b) applications made to the Tribunal under section 111 (about review of Commission’s decisions on merger clearances).

**34 Subsection 103(2)**

Omit “the Tribunal constituted by a presidential member”, substitute “a presidential member”.

**34A At the end of section 103**

Add:

- (3) The powers mentioned in subsection (2) may be exercised by a presidential member:
  - (a) whether or not the Tribunal has been constituted under section 37 in relation to the proceedings; and
  - (b) once the Tribunal is so constituted—whether or not that member is part of the Division of the Tribunal so constituted.

Schedule 1, item 36, page 37 (after line 22), after subsection 111(2), insert:

- (2A) The regulations may make it a requirement that an applicant under subsection (1) or (2) give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

Schedule 1, item 36, page 37 (after line 24), at the end of subsection 111(3), add:

Note: Division 2 contains provisions about procedure and evidence that relate to proceedings before the Tribunal.

Schedule 1, item 36, page 38 (lines 5 to 9), omit subsection 113(1), substitute:

- (1) After being notified of the application for review, the Commission must, within 2 business days, give to the Tribunal all the information that the Commission took into account in connection with the making of the determination to which the review relates.
- (1A) The Commission must identify which of that information (if any) the Commission excluded from the merger clearance register under subsection 95AI(3), (4) or (7).

Schedule 1, item 36, page 38 (after line 12), after the definition of *business day* in subsection 113(2), insert:

*merger clearance register* means the register kept under section 95AH.

Schedule 1, item 36, page 38 (lines 18 to 21), omit subsection 114(2), substitute:

- (2) The Tribunal may disclose information identified under subsection 113(1A) to such persons and on such terms as it considers reasonable and appropriate for the purposes of clarifying the information.

Schedule 1, item 36, page 39 (line 7), at the end of section 116, add:

; and (d) any information or report given to the Tribunal under section 115.

Schedule 1, item 36, page 39 (after line 22), after subsection 118(3), insert:

- (3A) If the Tribunal has not made its decision on the review within the period applicable under subsection (1) or (2), the Tribunal is taken to have made a determination affirming the Commission's determination.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 27, section 95AZB.

Question—That Schedule 1, item 27, section 95AZB stand as printed—put and negatived.

Senator Murray moved the following amendment:

Schedule 1, page 3 (after line 22), after item 4, insert:

**4A After section 8A**

Insert:

**8AA Procedures for merit selection of appointments under this Act**

- (1) The Minister must by writing determine a code of practice for selecting a person to be appointed by the Commonwealth or a Minister to a position under this Act, that sets out general principles on which the selections are to be made, including but not limited to:
- (a) merit; and
  - (b) independent scrutiny of appointments; and
  - (c) probity; and

- (d) openness and transparency.
- (2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.
  - (3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.
  - (4) In reviewing a code of practice, the Minister must invite the public to comment on the code.
  - (5) A code of practice determined under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 27, sections 95AT and 95AU.

Schedule 1, item 27, sections 95AT and 95AU agreed to.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1.

Question—That Schedule 1, as amended, be agreed to—put.

The committee divided—

#### AYES, 32

Senators—

Abetz	Colbeck	Johnston	Patterson
Adams	Coonan	Kemp	Ronaldson
Barnett	Eggleston	Lightfoot	Santoro
Boswell	Ferguson	Macdonald, Sandy	Scullion
Brandis	Fierravanti-Wells	Mason	Troeth
Calvert	Fifield	McGauran (Teller)	Trood
Campbell, Ian	Heffernan	Nash	Vanstone
Chapman	Humphries	Parry	Watson

#### NOES, 32

Senators—

Allison	Fielding	Marshall	Polley
Bartlett	Hogg	McEwen	Siewert
Bishop	Hurley	McLucas	Stephens
Brown, Bob	Hutchins	Milne	Sterle
Brown, Carol	Joyce	Moore	Stott Despoja
Campbell, George	Kirk	Murray	Webber (Teller)
Conroy	Ludwig	Nettle	Wong
Crossin	Lundy	O'Brien	Wortley

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

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

Schedule 3, item 9, page 51 (after line 25), after subsection 93AB(10), insert:

- (10A) The Commission must, as soon as practicable after receiving a valid collective bargaining notice, give a copy of the notice to the target.

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

Schedule 7, heading, page 71 (lines 2 and 3), omit the heading, substitute:

**Schedule 7—Exclusive dealing**

Schedule 7, heading to Part 1, page 71 (lines 4 and 5), omit the heading, substitute:

**Part 1—Tribunal review**

Schedule 7, items 18 to 29, page 73 (line 11) to page 74 (line 9), omit the items, substitute:

**18 Application**

The amendment made by item 17 applies in relation to notifications made after the commencement of that item.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 7, items 1 to 16.

Question—That Schedule 7, items 1 to 16 stand as printed—put and negatived.

Senator Conroy moved the following amendment:

Schedule 2, page 45 (after line 14), after item 4, insert:

**4A At the end of paragraph 90(11)(b)**

Add “except that where 30 days have expired, the applicant may apply to the Tribunal for authorisation and upon such application, the Commission shall be deemed to have not granted the authorisation applied for”.

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

Senator Conroy moved the following amendment:

Schedule 3, item 9, page 50 (line 8), omit “\$3,000,000”, substitute “\$10,000,000”.

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

Senator Conroy moved the following amendment:

Schedule 3, item 9, page 51 (lines 10 to 16), omit subsection 93AB(9).

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 31

Senators—

Allison	Faulkner	McEwen	Siewert
Bartlett	Hogg	McLucas	Stephens
Bishop	Hurley	Milne	Sterle
Brown, Bob	Hutchins	Moore	Stott Despoja
Brown, Carol	Kirk	Murray	Webber
Campbell, G (Teller)	Ludwig	Nettle	Wong
Conroy	Lundy	O’Brien	Wortley
Crossin	Marshall	Polley	

## NOES, 35

Senators—

Abetz	Coonan	Johnston	Parry
Adams	Eggleston	Joyce	Ronaldson
Barnett	Ferguson	Kemp	Santoro
Boswell	Fielding	Lightfoot	Scullion
Brandis	Fierravanti-Wells	Macdonald, Ian	Troeth
Calvert	Fifield	Macdonald, Sandy	Trood
Campbell, Ian	Heffernan	Mason	Vanstone
Chapman	Hill	McGauran (Teller)	Watson
Colbeck	Humphries	Nash	

Question negatived.

Senator Murray moved the following amendments together by leave:

Page 111, (after line 9) at the end of the bill, add:

**Schedule 13—Misuse of market power**

***Trade Practices Act 1974***

**1 Subsection 46(1)**

After “take advantage”, insert “, in that or any other market,”.

Page 111, (after line 9) at the end of the bill, add:

**2 After subsection 46(2)**

Insert:

- (2A) In determining for the purposes of this section whether a corporation has a substantial degree of power in a market, the Court may consider the corporation’s degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.

Page 111, (after line 9) at the end of the bill, add:

**3 After subsection 46(3)**

Insert:

- (3A) In determining for the purposes of this section whether a corporation:
- (a) has a substantial degree of power in a market; or
  - (b) has taken advantage of that power for a purpose described in paragraph (1)(a), (b) or (c);
- the Court may have regard to the capacity of the corporation, relative to other corporations in that or any other market, to sell in that or any other market a good or service at a price below the cost to the corporation of producing or acquiring the good or supplying the service.

Page 111, (after line 9) at the end of the bill, add:

**4 Before paragraph 51AC(3)(a)**

Insert:

- (aa) whether the supplier imposed or utilised contract terms allowing the unilateral variation of any contract between the supplier and the business consumer; and

Page 111, (after line 9) at the end of the bill, add:

**5 Before paragraph 51AC(4)(a)**

Insert:

(aa) whether the acquirer imposed or utilised contract terms allowing the unilateral variation of any contract between the acquirer and the small business supplier; and

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 9

Senators—

Allison	Fielding	Murray	Siewert
Bartlett (Teller)	Milne	Nettle	Stott Despoja
Brown, Bob			

NOES, 57

Senators—

Abetz	Evans	Lightfoot	Ronaldson
Adams	Faulkner	Ludwig	Santoro
Barnett	Ferguson	Lundy	Scullion
Bishop	Fierravanti-Wells	Macdonald, Ian	Stephens
Boswell	Fifield	Macdonald, Sandy	Sterle
Brandis	Heffernan	Marshall	Troeth
Brown, Carol	Hill	Mason	Trood
Calvert	Hogg	McEwen	Vanstone
Campbell, George	Humphries	McGauran (Teller)	Watson
Chapman	Hurley	McLucas	Webber
Colbeck	Hutchins	Moore	Wong
Conroy	Johnston	Nash	Wortley
Coonan	Joyce	Parry	
Crossin	Kemp	Patterson	
Eggleston	Kirk	Polley	

Question negatived.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 7.

Schedule 7, as amended, agreed to.

Bill, as amended, agreed to.

Bill to be reported with amendments.

---

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

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

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

Question put.



The Senate divided—

AYES, 35

Senators—

Abetz	Coonan	Joyce	Patterson
Adams	Eggleston	Kemp	Ronaldson
Barnett	Ferguson	Lightfoot	Santoro
Boswell	Fielding	Macdonald, Ian	Scullion
Brandis	Fierravanti-Wells	Macdonald, Sandy	Troeth
Calvert	Fifield	Mason	Trood
Campbell, Ian	Heffernan	McGauran (Teller)	Vanstone
Chapman	Hill	Nash	Watson
Colbeck	Johnston	Parry	

NOES, 30

Senators—

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

Question agreed to.

Bill read a third time.

39 NOTICE

Senator Wong gave a notice of motion as follows: To move on the next day of sitting—That the following matters be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by the first sitting day of 2006:

- (a) the likely impact of the package of industrial relations changes, 'WorkChoices – A New Workplace Relations System', announced by the Government on 9 October 2005;
- (b) the likely impact of any bills introduced by the Government to implement the package of industrial relations changes, 'WorkChoices – A New Workplace Relations System'; and
- (c) any other matters related to the implementation of the package of industrial relations changes, 'WorkChoices – A New Workplace Relations System'.

40 ADJOURNMENT

The Special Minister of State (Senator Abetz) moved—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 10.45 pm till Wednesday, 12 October 2005 at 10 am.

**41 ATTENDANCE**

Present, all senators except Senators Ferris\*, Forshaw\*, Payne\*, Ray\* and Sherry\* (\* on leave).

**HARRY EVANS**  
Clerk of the Senate