

2004-05

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 62

THURSDAY, 1 DECEMBER 2005

Contents

1	Meeting of Senate	1467
2	Leader of the Australian Greens	1467
3	Notice	1467
4	Workplace Relations Amendment (Work Choices) Bill 2005	1467
5	Questions	1470
6	Ministers—Answers to Questions	1470
7	Environment—Marine Protection—Answer to Question.....	1471
8	Workplace Relations Amendment (Work Choices) Bill 2005— Consideration.....	1471
9	Superannuation—Select Committee—Government Response—Planning for Retirement	1471
10	Corporations and Financial Services—Joint Statutory Committee— Government Response—Australian Accounting Standards	1471
11	Foreign Affairs, Defence and Trade—Joint Standing Committee— Government Response—Expanding Australia’s Trade and Investment Relations with the Gulf States.....	1472
12	Migration—Joint Standing Committee—Government Response—Review of Skilled Labour Migration Programs 2004.....	1472
13	National Capital and External Territories—Joint Standing Committee— Report—Norfolk Island Financial Sustainability	1472
14	Documents.....	1472
15	Auditor-General—Audit Report No. 19 of 2005-06—Document.....	1474
16	Committees—Appointment of Member.....	1474
17	European Bank for Reconstruction and Development Amendment Bill 2005 ..	1474
18	Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005 Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005	1475
19	Migration and Ombudsman Legislation Amendment Bill 2005	1475

20	Workplace Relations Amendment (Work Choices) Bill 2005	1475
21	Adjournment	1489
22	Attendance.....	1489

1 MEETING OF SENATE

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

2 LEADER OF THE AUSTRALIAN GREENS

Senator Bob Brown, by leave, informed the Senate of his appointment as Leader of the Australian Greens.

3 NOTICE

Senator Siewert: To move on 5 December 2005—That the Senate—

(a) notes:

- (i) the release of the submission by Women With Disabilities Australia (WWDA) to the Government on the ‘Chairman’s text for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities’,
- (ii) that, according to this report, there are 1.9 million women with disabilities in Australia and that it is widely acknowledged that they are one of the most marginalised groups in society, suffering triple discrimination – female, poor and disabled,
- (iii) that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) does not explicitly refer to women with disabilities and is not considered to adequately address their needs, and
- (iv) that the Government has not signed the Optional Protocol to the CEDAW which passed a general recommendation to ensure that it also covered the human rights of women with disabilities; and

(b) supports the recommendation from the WWDA that a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities must contain a substantive article on women with disabilities, in recognition of the need to acknowledge, emphasise and address the particular disadvantages faced by women the world over. (*general business notice of motion no. 342*)

4 WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005

Declaration of urgency: The Minister for Justice and Customs (Senator Ellison) declared the Workplace Relations Amendment (Work Choices) Bill 2005 an urgent bill and moved—That this bill be considered an urgent bill.

Leave refused: Senator Ludwig sought leave to make a statement relating to the declaration of urgency.

An objection was raised and leave was not granted.

Proposed suspension of standing orders: Senator Ludwig, at the request of the Leader of the Opposition in the Senate (Senator Evans) and pursuant to contingent notice, moved—That so much of the standing orders be suspended as would prevent Senator Ludwig making a statement.

Debate ensued.

Question put and negatived.

Question—That this bill be considered an urgent bill—put.

The Senate divided—

AYES, 34

Senators—

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

NOES, 31

Senators—

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

Question agreed to.

Allotment of time: Senator Ellison moved—That the time allotted for consideration of the remaining stages of the Workplace Relations Amendment (Work Choices) Bill 2005 be as follows:

Second reading	commencing immediately till noon today
Committee of the whole	till 2 pm today
	from not later than 3.45 pm till 6.30 pm today
	from 7.30 pm till 11 pm today
	from 9.30 am till 4.30 pm on 2 December 2005
Remaining stages	till 6 pm on 2 December 2005.

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

Question—That the question be now put—put.

The Senate divided—

AYES, 34

Senators—

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

NOES, 31

Senators—

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

Question agreed to.

Question—That the motion for the allotment of time be agreed to—put.

The Senate divided—

AYES, 34

Senators—

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

NOES, 31

Senators—

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

Question agreed to.

Order of the day read for the adjourned debate on the motion of the Special Minister of State (Senator Abetz)—That this bill be now read a second time.

Debate resumed.

Limitation of debate: The time allotted for the second reading of the bill expired.

Question—That this bill be now read a second time—put.

The Senate divided—

AYES, 36

Senators—

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

NOES, 34

Senators—

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

Question agreed to.

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.

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

5 QUESTIONS

Questions without notice were answered.

6 MINISTERS—ANSWERS TO QUESTIONS

Senator Bishop 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 ENVIRONMENT—MARINE PROTECTION—ANSWER TO QUESTION

Senator Siewert moved—That the Senate take note of the answer given by the Minister for the Environment and Heritage (Senator Ian Campbell) to a question without notice asked by Senator Siewert today relating to marine protection in Australia.

Question put and passed.

8 WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005—CONSIDERATION

Leave refused: Senator Murray sought leave to move the following motion:

- (1) That all amendments circulated to the Workplace Relations Amendment (Work Choices) Bill 2005 be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by Monday, 5 December 2005.
- (2) That so much of the standing orders be suspended as would prevent the following provisions having effect.
- (3) That further consideration of the Workplace Relations Amendment (Work Choices) Bill 2005 be postponed till Tuesday, 6 December 2005.
- (4) That the order of the Senate of 1 December 2005 relating to the allotment of time for the remaining stages of the Workplace Relations Amendment (Work Choices) Bill 2005 be varied as follows:

Committee of the whole	from 12.30 pm till 2 pm on 6 December 2005 from not later than 3.45 pm till 6.30 pm on 6 December 2005 from 7.30 pm till 11 pm on 6 December 2005 from 9.30 am till 2 pm on 7 December 2005 from not later than 3.45 pm till 4.45 pm on 7 December 2005
Remaining stages	till 6.15 pm on 7 December 2005.

An objection was raised and leave was not granted.

9 SUPERANNUATION—SELECT COMMITTEE—GOVERNMENT RESPONSE—PLANNING FOR RETIREMENT

The Minister for Justice and Customs (Senator Ellison) tabled the following document:

Superannuation—Select Committee—Report—Planning for retirement—Government response.

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

Question put and passed.

10 CORPORATIONS AND FINANCIAL SERVICES—JOINT STATUTORY COMMITTEE—GOVERNMENT RESPONSE—AUSTRALIAN ACCOUNTING STANDARDS

The Minister for Justice and Customs (Senator Ellison) tabled the following document:

Corporations and Financial Services—Joint Statutory Committee—Report—Australian Accounting Standards tabled in compliance with the *Corporations Act 2001* on 30 August and 16 November 2004—Government response.

**11 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—
GOVERNMENT RESPONSE—EXPANDING AUSTRALIA’S TRADE AND INVESTMENT
RELATIONS WITH THE GULF STATES**

The Minister for Justice and Customs (Senator Ellison) tabled the following document:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—
Expanding Australia’s trade and investment relations with the Gulf States—
Government response.

**12 MIGRATION—JOINT STANDING COMMITTEE—GOVERNMENT RESPONSE—REVIEW
OF SKILLED LABOUR MIGRATION PROGRAMS 2004**

The Minister for Justice and Customs (Senator Ellison) tabled the following document:

Migration—Joint Standing Committee—Report—To make a contribution: Review
of skilled labour migration programs 2004—Government response.

**13 NATIONAL CAPITAL AND EXTERNAL TERRITORIES—JOINT STANDING
COMMITTEE—REPORT—NORFOLK ISLAND FINANCIAL SUSTAINABILITY**

The Chair of the Joint Standing Committee on the National Capital and External
Territories (Senator Lightfoot) tabled the following report:

National Capital and External Territories—Joint Standing Committee—Norfolk
Island financial sustainability: The challenge—Sink or swim—Report, dated
November 2005.

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

Question put and passed.

14 DOCUMENTS

The following documents were tabled by the Clerk:

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

Broadcasting Services Act—Broadcasting Services (Australian Content) Standards
2005 [F2005L03716]*.

Civil Aviation Act—

Civil Aviation Regulations—Instruments Nos—

CASA 317/05—Authority and permission – helicopter winching operations
[F2005L03719]*.

CASA EX52/05—Exemption – to produce a modification or replacement
part [F2005L03768]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—

AD/DA40/6—Nose Landing Gear Leg [F2005L03821]*.

AD/S-76/74—Main Rotor Assembly Lower Bifilar Support
[F2005L03820]*.

Commonwealth Electoral Act—Certificate of the Electoral Commissioner as to the
numbers of the people of the Commonwealth and of the several States and
Territories and the number of Members of the House of Representatives to be
chosen in the several States and Territories, dated 17 November 2005.

Customs Act—

Tariff Concession Orders—

0506769 [F2005L03771]*.

0511535 [F2005L03774]*.

0511804 [F2005L03776]*.
0511815 [F2005L03777]*.
0511818 [F2005L03779]*.
0511819 [F2005L03780]*.
0511963 [F2005L03744]*.
0511965 [F2005L03750]*.
0512079 [F2005L03752]*.
0512083 [F2005L03754]*.
0512089 [F2005L03760]*.
0512183 [F2005L03762]*.
0512185 [F2005L03781]*.
0512189 [F2005L03784]*.
0512191 [F2005L03785]*.
0512197 [F2005L03788]*.
0512198 [F2005L03789]*.
0512265 [F2005L03792]*.

Tariff Concession Revocation Instrument 21/2005 [F2005L03729]*.

Defence Act—Determinations under section 58B—Defence Determinations—
2005/50—Housing assistance rates – annual review.
2005/51—Army completion bonus scheme.

Environment Protection and Biodiversity Conservation Act—Amendments of lists
of exempt native specimens, dated—

28 October 2005 [F2005L03798]*.
7 November 2005 [F2005L03763]*.
26 November 2005 [F2005L03848]*.
27 November 2005—
[F2005L03813]*.
[F2005L03814]*.
28 November 2005—
[F2005L03806]*.
[F2005L03810]*.
[F2005L03826]*.
[F2005L03827]*.
[F2005L03828]*.
[F2005L03832]*.
[F2005L03841]*.
[F2005L03842]*.
29 November 2005—
[F2005L03815]*.
[F2005L03819]*.
[F2005L03822]*.
[F2005L03825]*.
[F2005L03836]*.
[F2005L03839]*.
[F2005L03845]*.
[F2005L03846]*.

30 November 2005 [F2005L03847]*.

Family Law Act—Select Legislative Instrument 2005 No. 292—Family Law
Amendment Rules 2005 (No. 3) [F2005L03838]*.

National Health Act—

Arrangement No. PB 35 of 2005—Highly Specialised Drugs Program [F2005L03741]*.

Declaration No. PB 29 of 2005 [F2005L03722]*.

Determinations Nos—

PB 33 of 2005 [F2005L03725]*.

PB 34 of 2005 [F2005L03724]*.

Telecommunications (Consumer Protection and Service Standards) Act—NRS Levy Formula Modification Determination 2005 (No. 1) [F2005L03816]*.

* Explanatory statement tabled with legislative instrument.

15 AUDITOR-GENERAL—AUDIT REPORT NO. 19 OF 2005-06—DOCUMENT

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

Auditor-General—Audit report no. 19 of 2005-06—Performance audit—Managing for quarantine effectiveness—Follow-up: Department of Agriculture, Fisheries and Forestry; Biosecurity Australia.

16 COMMITTEES—APPOINTMENT OF MEMBER

The Deputy President (Senator Hogg) informed the Senate that the President had received a letter nominating a senator to be a member of committees.

The Special Minister of State (Senator Abetz), by leave, moved—That Senator Hurley be appointed as a participating member of the Legal and Constitutional Legislation and References Committees.

Question put and passed.

17 EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT AMENDMENT BILL 2005

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

Message no. 252, dated 30 November 2005—A Bill for an Act to amend the *European Bank for Reconstruction and Development Act 1990*, and for related purposes.

The Special Minister of State (Senator Abetz) 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 Abetz moved—That this bill be now read a second time.

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

**18 EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION AMENDMENT
(WELFARE TO WORK AND OTHER MEASURES) BILL 2005
FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (WELFARE TO
WORK) BILL 2005**

Messages from the House of Representatives were reported transmitting for the concurrence of the Senate the following bills:

Message no. 253, dated 1 December 2005—A Bill for an Act to amend the social security law, and for other purposes.

Message no. 254, dated 1 December 2005—A Bill for an Act to amend the law relating to family and community services, and for related purposes.

The Special Minister of State (Senator Abetz) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

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

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

19 MIGRATION AND OMBUDSMAN LEGISLATION AMENDMENT BILL 2005

A message from the House of Representatives was reported agreeing to the following bill without amendment:

Message no. 251, dated 30 November 2005—Migration and Ombudsman Legislation Amendment Bill 2005.

20 WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005

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

In the committee

Consideration resumed of the bill.

Bill further debated.

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.

Bill further debated.

Senator Murray moved the following amendment:

Schedule 1, item 1, page 4 (line 7) to page 5 (line 28), omit section 3, substitute:

3 Principal object

The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:

- (a) encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market; and
- (b) establishing and maintaining a simplified national system of workplace relations; and
- (c) providing an effective and fair safety net of minimum wages and conditions for those whose employment is regulated by this Act; and
- (d) providing an effective and fair safety net for agreement-making while ensuring that the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level; and
- (e) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances; and
- (f) providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them; and
- (g) ensuring compliance with minimum standards, industrial instruments and bargaining processes by providing effective means for the investigation and enforcement of:
 - (i) employee entitlements; and
 - (ii) the rights and obligations of employers and employees, and their organisations; and
- (h) providing employees and employers with mechanisms to assist them to resolve disputes between them by conciliation and, where appropriate and within specified limits, by arbitration; and
- (i) balancing the right to take industrial action for the purposes of collective bargaining at the workplace level with the need to protect the public interest; and
- (j) ensuring freedom of association, including the rights of employees and employers to join an organisation or association of their choice, or not to join an organisation or association; and
- (k) protecting the competitive position of young people in the labour market, promoting youth employment, youth skills and community standards and assisting in reducing youth unemployment; and

- (l) assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers; and
- (m) respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
- (n) assisting in giving effect to Australia's international obligations in relation to labour standards.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 31

Senators—

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

NOES, 34

Senators—

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

Question negatived.

Bill further debated.

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

Schedule 1, item 1, page 4 (lines 20 and 21), omit “providing a foundation of key minimum standards for agreement-making while ensuring that”, substitute “ensuring that, as far as possible”.

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

Schedule 1, item 2, page 7 (line 24), omit “activities”, substitute “an activity”.

Schedule 1, item 2, page 18 (line 18), omit “Part XA”, substitute “Parts VI and XA, and in regulations made for the purposes of section 101D”.

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

Schedule 1, item 6, page 23 (after line 8), at the end of subsection 7AA(1), add:

Note 3: Part VC (Industrial action) and related provisions of this Act may extend in relation to Australia's exclusive economic zone, and in relation to Australia's continental shelf, as prescribed by the regulations. See section 106C.

Schedule 1, item 8, page 24 (line 7), omit "86.", substitute "86;"

Schedule 1, item 8, page 24 (after line 7), at the end of subsection 7B(2), add:

(d) section 106C.

Schedule 1, item 8, page 24 (line 10), omit "section 86", substitute "sections 86 and 106C".

Schedule 1, item 9, page 24 (lines 29 and 30), omit "for a purpose other than a purpose connected with occupational health and safety".

Schedule 1, item 9, page 25 (line 11), at the end of paragraph 7C(3)(c), add "(including entry of a representative of a trade union to premises for a purpose connected with occupational health and safety)".

Schedule 1, item 9, page 25 (after line 11), after paragraph 7C(3)(c), insert:

(ca) matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers);

Schedule 1, item 9, page 25 (lines 19 and 20), omit paragraph 7C(3)(j).

Schedule 1, item 9, page 25 (line 32), after "with", insert "such entry for a purpose connected with".

Schedule 1, item 9, page 26 (after line 4), after subsection 7C(4), insert:

(4A) To avoid doubt, subsection (4) has effect even if the law is covered by subsection (2) (so that subsection (1) does not apply to the law). This subsection does not limit subsection (4).

Schedule 1, item 9, page 26 (line 16), after "matter", insert ", except a law that is prescribed by the regulations as a law to which awards and workplace agreements are not subject".

Schedule 1, item 9, page 26 (line 19), omit paragraph 7D(2)(c), substitute:

(c) training arrangements;

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

Schedule 1, item 71, page 213 (after line 5), at the end of Division 1, add:

106C Extraterritorial extension

Australia's exclusive economic zone

- (1) This Part, and the rest of this Act so far as it relates to this Part, extend in relation to Australia's exclusive economic zone in the way prescribed by the regulations (if any).
- (2) If the regulations prescribe modifications of this Act (other than this section) for its operation in relation to Australia's exclusive economic zone under subsection (1), this Act has effect (in accordance with that subsection) as modified in relation to Australia's exclusive economic zone.

Australia's continental shelf

- (3) This Part, and the rest of this Act so far as it relates to this Part, extend, in the way prescribed by the regulations (if any), in relation to a part of Australia's continental shelf that is prescribed by the regulations.
- (4) If the regulations prescribe modifications of this Act (other than this section) for its operation in relation to a prescribed part of Australia's continental shelf under subsection (3), this Act has effect (in accordance with that subsection) as modified in relation to that part.

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

Definitions

- (5) In this section:

modifications includes additions, omissions and substitutions.

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

Schedule 1, item 71, page 289 (after line 18), at the end of subsection 116B(3), add:

Note: In this Part, references to independent contractors are not confined to natural persons (see subsection 4(2)).

Schedule 1, item 359, page 522 (after line 32), at the end of clause 2, add:

- (5) A reference in this Schedule to an independent contractor is not confined to a natural person.

Schedule 1, item 359, page 534 (after line 20), at the end of subclause 18(3), add:

Note: In this Schedule, references to independent contractors are not confined to natural persons (see subclause 2(5)).

Schedule 1, item 360, page 599 (after line 22), at the end of clause 1, add:

- (2) A reference in regulations made for the purposes of clause 9, subclause 19(1), clause 37 or subclause 42(1) to an independent contractor is not confined to a natural person.

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

Schedule 1, item 9, page 25 (line 14), omit paragraph 7C(3)(f), substitute:

- (f) the observance of, and the rate of payment of an employee for, public holidays;

Schedule 1, item 71, page 160 (after line 3), after Part VA, insert:

Part VAA—Guaranteed public holidays

Division 7—Public holidays

Subdivision A—Preliminary

95AA Employees to whom Division applies

This Division applies to all employees whose remuneration and conditions would be determined by an award if they were not determined by an individual or collective agreement.

95AB Definitions

In this Division:

employee means an employee to whom this Division applies under section 95AA.

public holiday means a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:

- (a) a union public holiday; or
- (b) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph as a public holiday.

Subdivision B—Guarantee of public holidays**95AC The guarantee**

- (1) An employee is entitled to the benefit of each public holiday.
- (2) Where an employee does not work on a public holiday, the employee must be paid either:
 - (a) for the number of hours ordinarily worked by the employee on a daily basis; or
 - (b) 7.6 hours in the case of employees who work an average of 38 hours per week over the employee's applicable averaging period (pro rata in the case of employees who work less than an average of 38 hours per week over the employee's applicable averaging period);
 whichever is the greater.
- (3) An employee who works on a public holiday must receive at least in addition to payment for the hours worked, an additional day's annual leave or an additional day's leave to be taken at a time which is mutually agreed between the employer and employee.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 33

Senators—

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

NOES, 34

Senators—

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

Question negatived.

Senator Murray moved the following amendment:

Schedule 1, item 71, page 160 (after line 3), at the end of Part VA, add:

Division 7—Public holidays—Preserve Christmas Day

Subdivision 1—Preliminary

94ZZC Employees to whom Division applies

This Division applies to all employees.

94ZZD Definitions

In this Division:

employee means an employee to whom this Division applies under section 95AA.

public holiday means a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region.

Subdivision 2—Guarantee of public holidays

94ZZE The guarantee

- (1) An employee is entitled to the benefit of each public holiday.
- (2) Where an employee does not work on a public holiday, and normally would (as determined by previous months' work pattern), the employee must be paid, either:
 - (a) for the number of hours ordinarily worked by the employee on a daily basis; or
 - (b) 7.6 hours in the case of employees who work an average of 38 hours per week over the employee's applicable averaging period (pro rata in the case of employees who work less than an average of 38 hours per week over the employee's applicable averaging period);
 whichever is the greater.
- (3) An employee, who is not a salaried employee, who works on a public holiday must be paid not less than two and a half times the basic periodic rate of pay for each hour worked.

Debate ensued.

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

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

Schedule 1, item 6, page 22 (after table item 4), insert:

4A Division 1A Public holidays Section 170AM
 of Part VIA

Schedule 1, item 71, page 104 (lines 25 to 32), omit the definition of *public holiday* in section 92A, substitute:

public holiday means:

- (a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
 - (i) a union picnic day; or
 - (ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday; or
- (b) a day that, under (or in accordance with a procedure under) a law of a State or Territory, or an award or workplace agreement, is substituted for a day referred to in paragraph (a).

Schedule 1, item 170, page 385 (after line 31), after paragraph (b) of the definition of *applicable provision* in section 177A, insert:

(ba) section 170AF (public holidays); and

Schedule 1, item 171, page 388 (after table item 6), insert:

- 6A section 170AF (public (a) an employee to whom section 170AF
 holidays) applies;
- (b) an organisation of employees (subject to subsection (3));
 - (c) an inspector

Schedule 1, item 171, page 388 (after line 21), after paragraph 177AA(3)(c), insert:
(ca) section 170AF; or

Schedule 1, item 240, page 473 (after line 11), after Division 5, insert:

Division 5A—Public holidays

507A Additional effect of Act—public holidays

Without affecting its operation apart from this section, Division 1A of Part VIA also has effect in relation to the employment of any employee in Victoria, and for this purpose:

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

- (d) section 170AH has effect as if Part VIIA had been modified in a corresponding way to the way in which Division 1A of Part VIA is modified by paragraphs (a), (b) and (c).

507B Additional effect of Act—enforcement of, and compliance with, section 170AF

Without affecting its operation apart from this section, Part VIII also has effect in relation to section 170AF as that section applies because of section 507A, and for this purpose:

- (a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and
- (b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and
- (c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria; and
- (d) each reference in that Part to section 170AF is to be read as a reference to section 170AF as that section has effect because of section 507A.

Schedule 1, item 360, page 595 (after line 29), after Part 7, insert:

Part 7A—Relationship between pre-reform agreements etc. and public holiday entitlement

30A Relationship between pre-reform agreements etc. and public holiday entitlement

Division 1A of Part VIA (public holidays) does not apply to an employee if the employee's employment is subject to any of the following instruments:

- (a) a pre-reform certified agreement;
- (b) a pre-reform AWA;
- (c) a section 170MX award.

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

Schedule 1, item 360, page 600 (line 12) to page 604 (line 29), omit Divisions 1 and 2, substitute:

Division 1—Preserved individual State agreements

Subdivision A—What is a preserved individual State agreement?

3 Preserved individual State agreements

If, immediately before the reform commencement:

- (a) the terms and conditions of employment of an employee were determined, in whole or in part, under a State employment agreement (the *original individual agreement*); and
- (b) that employee was the only employee who was bound by the agreement, or whose employment was subject to the agreement;

a *preserved individual State agreement* is taken to come into operation on the reform commencement.

Subdivision B—Who is bound by or subject to a preserved individual State agreement?**4 Who is bound by or subject to a preserved individual State agreement?**

- (1) Any person who:
 - (a) immediately before the reform commencement, was bound by, or a party to, the original individual agreement, under the terms of that agreement or a State or Territory industrial law as in force at that time; and
 - (b) is one of the following:
 - (i) an employer;
 - (ii) an employee;
 - (iii) an organisation;is bound by the preserved individual State agreement.
- (2) The employment of a person is subject to the preserved individual State agreement if, immediately before the reform commencement, that employment was subject to the original individual agreement.

Subdivision C—Terms of a preserved individual State agreement**5 Terms of a preserved individual State agreement**

- (1) A preserved individual State agreement is taken to include the terms of the original individual agreement, as in force immediately before the reform commencement.
- (2) If, immediately before the reform commencement, a term of another State employment agreement determined, in whole or in part, a term or condition of employment of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that term of the other State employment agreement, as in force at that time, is taken to be a term of the preserved individual State agreement.
- (3) If, immediately before the reform commencement, a term of a State award determined, in whole or in part, a term or condition of the employment of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that term, as in force at that time, is taken to be a term of the preserved individual State agreement.
- (4) If, immediately before the reform commencement, a provision of a State or Territory industrial law determined, in whole or in part, a preserved entitlement of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that provision, as in force at that time, is taken to be a term of the preserved individual State agreement.
- (5) In this clause:

preserved entitlement means:

 - (a) an entitlement to:
 - (i) annual leave and annual leave loadings; or
 - (ii) parental leave, including maternity leave and adoption leave; or
 - (iii) personal/carer's leave; or
 - (iv) leave relating to bereavement; or

- (v) ceremonial leave; or
- (vi) notice of termination; or
- (vii) redundancy pay; or
- (viii) loadings for working overtime or shift work; or
- (ix) penalty rates, including the rate of payment for work on a public holiday; or
- (x) rest breaks; or

(b) another prescribed entitlement.

6 Nominal expiry date of a preserved individual State agreement

The *nominal expiry date* of a preserved individual State agreement is:

- (a) the day on which the original individual agreement would nominally have expired under the relevant State or Territory industrial law; or
- (b) if that day falls after the end of a period of 3 years beginning on the commencement of the original individual agreement—the last day of that 3 year period.

7 Powers of State industrial authorities

- (1) If a preserved individual State agreement confers a function or power on a State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.
- (2) However, the employer and the persons bound by the preserved individual State agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

8 Dispute resolution processes

- (1) A preserved individual State agreement is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.
- (2) Any term of the preserved individual State agreement that would otherwise deal with the resolution of those disputes is void to that extent.

9 Prohibited content

A term of a preserved individual State agreement is void to the extent that it contains prohibited content of a prescribed kind.

Note: The Employment Advocate can alter the document recording the terms of a preserved State agreement to remove prohibited content of a prescribed kind (see clause 19).

Division 2—Preserved collective State agreements

Subdivision A—What is a preserved collective State agreement?

10 Preserved collective State agreements

If, immediately before the reform commencement:

- (a) the terms and conditions of employment of an employee were determined, in whole or in part, under a State employment agreement (the *original collective agreement*); and

- (b) that employee was one of a number of employees who were bound by the agreement, or whose employment was subject to the agreement;

a *preserved collective State agreement* is taken to come into operation on the reform commencement.

Subdivision B—Who is bound by or subject to a preserved collective State agreement?

11 Who is bound by a preserved collective State agreement?

Current employees

- (1) Any person who:
 - (a) immediately before the reform commencement, was bound by, or a party to, the original collective agreement, under the terms of that agreement or a State or Territory industrial law as in force at that time; and
 - (b) is one of the following:
 - (i) an employer;
 - (ii) an employee;
 - (iii) an organisation;

is bound by the preserved collective State agreement.

Future employees

- (2) If:
 - (a) an employer who is bound by a preserved collective State agreement employs a person after the reform commencement; and
 - (b) under the terms of the original collective agreement, as in force immediately before the reform commencement, the person would have been bound by that agreement;

that person is bound by the preserved collective State agreement.

12 Whose employment is subject to a preserved collective State agreement?

Current employees

- (1) The employment of a person is subject to a preserved collective State agreement if that employment was, immediately before the reform commencement, subject to the original collective agreement.

Future employees

- (2) If:
 - (a) an employer who is bound by a preserved collective State agreement employs a person after the reform commencement; and
 - (b) under the terms of the original collective agreement, as in force immediately before the reform commencement, that person's employment would have been subject to that agreement;

that employment is subject to the preserved collective State agreement.

Subdivision C—Terms of a preserved collective State agreement**13 Terms of a preserved collective State agreement**

- (1) A preserved collective State agreement is taken to include the terms of the original collective agreement, as in force immediately before the reform commencement.
- (2) If, immediately before the reform commencement, a term of a State award would have determined, in whole or in part, a term or condition of employment of a person who would have been bound by, or whose employment would have been subject to, the original collective agreement, then, to that extent, that term, as in force at that time, is taken to be a term of the preserved collective State agreement.
- (3) If, immediately before the reform commencement, a provision of a State or Territory industrial law would have determined, in whole or in part, a preserved entitlement of a person who would have been bound by, or whose employment would have been subject to, the original collective agreement, then, to that extent, that provision, as in force at that time, is taken to be a term of the preserved collective State agreement.
- (4) In this clause:

preserved entitlement means:

- (a) an entitlement to:
 - (i) annual leave and annual leave loadings; or
 - (ii) parental leave, including maternity leave and adoption leave; or
 - (iii) personal/carer's leave; or
 - (iv) leave relating to bereavement; or
 - (v) ceremonial leave; or
 - (vi) notice of termination; or
 - (vii) redundancy pay; or
 - (viii) loadings for working overtime or shift work; or
 - (ix) penalty rates, including the rate of payment for work on a public holiday; or
 - (x) rest breaks; or
- (b) another prescribed entitlement.

14 Nominal expiry date of a preserved collective State agreement

The ***nominal expiry date*** of a preserved collective State agreement is:

- (a) the day on which the original collective agreement would nominally have expired under the relevant State or Territory industrial law; or
- (b) if that day falls after the end of a period of 3 years beginning on the commencement of the original collective agreement—the last day of that 3 year period.

15 Powers of State industrial authorities

- (1) If a preserved collective State agreement confers a function or power on a State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.

- (2) However, the employer and the persons bound by the preserved collective State agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

15A Dispute resolution processes

- (1) A preserved collective State agreement is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.
- (2) Any term of the preserved collective State agreement that would otherwise deal with the resolution of those disputes is void to that extent.

15B Prohibited content

A term of a preserved collective State agreement is void to the extent that it contains prohibited content of a prescribed kind.

Note: The Employment Advocate can alter the document recording the terms of a preserved State agreement to remove prohibited content of a prescribed kind (see clause 19).

Division 2A—Effect and operation of a preserved State agreement

15C Effect of a preserved State agreement

- (1) Except as provided in or under this Part, or otherwise in or under this Act, a preserved State agreement has effect according to its terms.
- (2) This Part has effect despite the terms of the preserved State agreement itself, or any State award or law of a State or Territory.
- (3) None of the terms and conditions of employment included in the preserved State agreement are enforceable under the law of a State or Territory.

15D Effect of awards while a preserved State agreement in operation

An award has no effect in relation to an employee while the terms of a preserved State agreement operate in relation to the employee.

15E Relationship between a preserved State agreement and the Australian Fair Pay and Conditions Standard

The Australian Fair Pay and Conditions Standard does not apply to an employee if the employee is bound by a preserved State agreement, or the employee's employment is subject to a preserved State agreement.

15F Relationship between a preserved State agreement and public holiday entitlement

Division 1A of Part VIA (public holidays) does not apply to an employee if the employee is bound by a preserved State agreement, or the employee's employment is subject to a preserved State agreement.

15G When preserved State agreements cease to operate

- (1) A preserved State agreement ceases to be in operation if it is terminated under clause 21.
- (2) A preserved State agreement ceases to be in operation, in relation to an employee, when one of the following comes into operation in relation to the employee:

- (a) a workplace agreement;
 - (b) a workplace determination;
- even if the nominal expiry date of the preserved State agreement has not passed.
- (3) If a preserved State agreement has ceased operating in relation to an employee because of subclause (2), the agreement can never operate again in relation to that employee.

At 11 pm: The Acting Deputy President (Senator Marshall) resumed the chair and the Temporary Chair of Committees (Senator Ferguson) reported progress.

21 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 11.38 pm till Friday, 2 December 2005 at 9.30 am.

22 ATTENDANCE

Present, all senators except Senators Carr, Ferris*, Hutchins, Ray* and Watson (* on leave).

HARRY EVANS
Clerk of the Senate