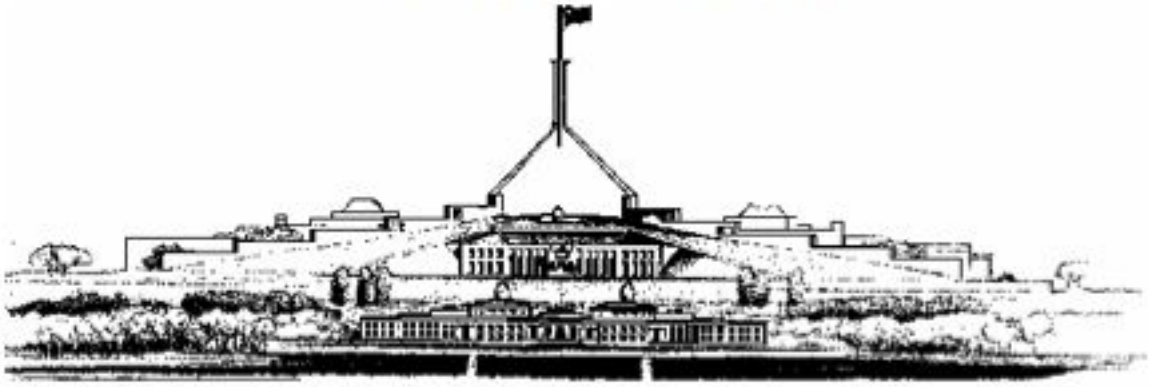
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

APPROPRIATION BILL (NO. 3) 2000-2001

APPROPRIATION BILL (NO. 4) 2000-2001

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (NO. 2) 2000-2001

Second Reading

SPEECH

Tuesday, 27 February 2001

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Tuesday, 27 February 2001	**Source**	House
Page	24559	**Proof**	No
Questioner		**Responder**	
Speaker	Cox, David, MP	**Question No.**	

Mr COX (Kingston) (10.17 pm)—The issue I want to discuss tonight is the bid by Royal Dutch Shell for Woodside Petroleum. The national interest test that should be applied in the case of the current foreign investment application is that exploration and development of the North West Shelf not be impeded by the conflicting interests of Shell. Those conflicting interests are in Brunei, Oman, Malaysia and Russia—Sakhalin Island. It is critical that, in applying the national interest test under the Foreign Acquisitions and Takeovers Act, the government gets it right because, once approval is granted, its influence will be minimal.

The wide ranging opinion of Professor Ian Harper, written for Shell, concludes that there are no national interest issues that require the government to exercise its foreign investment power. Most of it deals with issues that are not critical to the national interest in this case. It is weakest on the single issue that is critical—the national interest test described in my first paragraph. Professor Harper's opinion deals with the issue in a theoretical manner. It does not work through the detail of Shell's conflicting LNG interests or the extra influence Shell would have as operator of the North West Shelf. Instead, we are asked to accept that Shell has no influence where it does not have total control, and that Shell's best interests are served by each of the projects in which it has a stake competing aggressively for new business opportunities, free from any overarching Shell agendas.

Professor Harper's economic theories are blown apart by a report in a Scottish newspaper, the *Evening News*, that takes an interest in the world petroleum industry, probably because of its proximity to the North Sea. On Friday, 15 December 2000, it quoted Raoul Restucci, the Chairman of Shell Australia Investments Ltd and the executive of Royal Dutch Shell who is in charge of that company's bid to take over Woodside Petroleum, as saying:

> If Shell wins control after the shareholder vote, probably in late March or April, it will aim to stop Woodside competing directly with Shell, as it has in liquefied natural gas receiving terminals in China and India.

That is nothing short of a confession that Shell's intentions for Woodside are to stop it competing with Shell's other interests. When the Prime Minister and the Treasurer examine the national interest issues relating to this bid, that statement by the man who is driving Shell's bid should be at the front of their minds. In making its decision on the national interest test, the government should be looking at commercial reality, not economic theory. That is a view backed up by a recent piece of analysis published by Salomon Smith Barney that canvasses the conflicting interests of Shell, including where it `is effectively competing with the North West Shelf project in an initial tender' in China, and concludes:

> We believe the FIRB decision must address the potential for conflicting situations that may be contrary to the North West Shelf or Australia's national interest.

In the face of this evidence—particularly Mr Restucci's self-confession that Shell has a conflict with the interests of the North West Shelf—the Prime Minister and the Treasurer ought to be prepared to say whether they are prepared to act to protect Australia's national interest. To date Shell have not commented publicly on the Restucci statement. They have, however, given very general assurances that Shell's interests would not impede development on the shelf. General assurances by Shell about the project have something of a history, as revealed by Kevan Gosper in his autobiography, co-written by Glenda Korporaal, *An Olympic Life*. Kevan Gosper was once a senior Shell executive. The book tells how, in 1981, Gosper had advised Shell's board that the Australian government was stable and reliable and would not shift the goal posts on issues such as the tax regime and licences. Gosper then goes on to say:

> Just as I arrived back in Australia, the Treasurer, John Howard, announced, with little notice, that he was inviting Shell Australia to sell 25 per cent of its shares on the Australian Stock Exchange. The announcement sent shock waves through all international companies based in Australia and raised serious concerns with my shareholders who wondered if I could continue to deliver on the North-West Shelf project.
>
> I found out that a friend of mine, Sir Peter Derham, was hosting a dinner at the Hilton which Malcolm Fraser was attending. I got myself an invitation to the dinner, sat next to the Prime Minister and gave him a strong serve about his government's

announcement about Shell putting 25 per cent of its shareholding on the market. For an international company any decision to float off part of its capital on a local market had to be its own decision, not the government's. There was also a concern that if Shell agreed to this suggestion, any other international company operating in Australia could be faced with a similar request. I told Fraser that if the Government insisted on the sell off, I couldn't guarantee that the North-West Shelf project would go ahead with Shell's involvement. `You are changing the rules, moving the goal posts,' I said.

Fraser said to me: `What you're saying is, we got it wrong.' I remember replying: `Have you ever, Prime Minister!' He advised me to talk to Howard and other key ministers such as his deputy, Doug Anthony, Billy Snedden, Phillip Lynch and Ian Sinclair. For the next two weeks I practically lived in Canberra, meeting all these ministers and pointing out the importance of having a stable and consistent government policy. I never threatened them—you never threaten government—but I went to great lengths to explain to them the importance of our investment in the North-West Shelf and how Shell may have to rethink the project if it were forced to sell off 25 per cent of its corporate presence in Australia against its wishes. Howard then took the unprecedented decision of suggesting that we both make a joint statement saying that it wasn't a good time to be talking about an international company having more local shareholding but that Shell Australia would endeavour to `augment'—Richard Searby's magic word—local participation in any future resource investments and the matter was dropped.

Richard Searby is now one of the independent directors of Woodside, so he has moved on—but how far? This story makes two relevant points. The first is that Shell are past masters at using nebulous phrases to give meaningless and unenforceable assurances about the company's future intentions in relation to the project. The second is John Howard's previous foreign investment policy failure in relation to the project, a failure in terms of both policy development and implementation.

The question is: what options are available to the government short of rejecting the application to ensure the national interest is protected? To do that, the government must consider what additional influence Shell would have on the joint venture. When a $440 billion company makes a bid for control of a $10 billion company, it is not a merger; it is a takeover. If Shell's bid is successful, it will transfer substantial assets and liabilities into Woodside and lift its stake from the current 34 per cent to 60 per cent. Shell's direct 16.7 per cent interest and the 16.7 per cent interest of this 60 per cent Shell subsidiary will give it one-third of the votes in the North West Shelf joint venture.

But what is more important than its substantial minority interest is that Woodside is the North West Shelf operator and that, in acquiring the operatorship, Shell gets a degree of influence that goes well beyond its percentage interest. It will control the information and processes for managing the project. This is a sensitive matter for the non-Shell joint venture partners, and it should be for the government. The chairman of Shell Australia and the CEO of Shell Development Australia recognised this sensitivity in an email I received two weeks ago saying:

Shell has indicated its willingness to enter into discussions with its joint venture partners in the NWS to review post-merger governance arrangements, if these are required to give further assurances.

Changes to governance arrangements could range from window dressing to the substantial, and need to satisfy both the joint venture partners and the government. I would put any commitments to an independent chairman and a substantial minority of independent directors on the Woodside board in the category of window dressing. After all, it would be Shell, with a 60 per cent stake, who would appoint the majority of the board. These and other changes to the various formal and less formal operating arrangements might offer some comfort, but will doubtless come under great pressure sooner or later, particularly if there are further attempts to concentrate ownership.

Given how fluid these commercial arrangements can be and how little capacity the government has to police the national interest implications of future changes, it should be very wary of propositions in these areas. There have been reports that more than one of the non-Shell partners want to ensure the operator remains independent. If that is being put to the government from within the joint venture, then that is something it should take very seriously.

In deciding whether there are satisfactory conditions it could impose to protect the national interest, the government must ensure that they will be effective, including in the face of possible future changes to the ownership arrangements. If the government cannot devise an effective set of conditions that are acceptable to Shell, or if the company is unable or unwilling to amend its application to satisfy the national interest test, Shell should be told to withdraw its application, to avoid rejection. The only thing that can save the government from these difficult decisions is a white knight, preferably an Australian white knight, who does not have the conflicting interests that Shell has and is prepared to give the shareholders full value.

Since this is a debate on appropriations legislation, I would also like to talk about the state of the budget. Since I last had the opportunity to speak in this place on the state of the Commonwealth budget, the government has released its midyear economic and fiscal outlook. I seek leave to incorporate in *Hansard* a table that shows the effect of policy decisions made by this government up to the 2000 midyear review and a table that shows how, over the Treasurer's first five full budget years, the reduction in net debt is expected to be $52.2 billion, of which $50.3 billion will be derived from asset sales.

Leave granted.

The documents read as follows—

NET IMPACT OF POLICY DECISIONS 1996 TO 2000 ON OUT-YEARS

	96/97	97/98	98/99	99/00	2000/01	2001/02	2002/2003
1996	2860	7477	6083	7641			
1997		40	243	-187	-392		
1998			-2183	-3261	-7371	-7683	
1999				-2542	-2879	-3914	-2567
2000				-568	-2457	-1818	-1611

(Note change from cash to accrual accounts in 1999)

Positive numbers represent improvements to the budget bottom line. Negative numbers represent a deterioration in the budget bottom line.

Source: Compiled from the reconciliation and measures tables in the Budget papers and Mid Year Economic and Fiscal Outlook for 1996 to 2000

CONTRIBUTION OF ASSET SALES TO REDUCTION IN COMMONWEALTH NET DEBT

1996/97 TO 2000/01

		$ million		
	SALE OF NON-FINANCIAL ASSETS	SALE OF FINANCIAL ASSETS	TOTAL ASSET SALES	REDUCTION IN NET DEBT
1996/97	828	8,557	9,385	-500
1997/98	2,063	14,415	17,478	13,400
1998/99	701	65	766	12,500
1999/2000	2,223	10,147	12,370	14,100
2000/01	4,321	6,000	10,321	12,700
TOTAL	10,136	40,183	50,319	52,200

Columns may not add due to rounding

Source:

OASITO sales list

Budget Paper No. 1 2000

ABS Government Financial Estimates 1999/2000 (5501.0) Mid-Year Economic and Fiscal Outlook 2000-01

Mr COX—Thank you. In the midyear review of its budget, the Treasurer and the Minister for Finance and Administration said that the Commonwealth's fiscal outlook has strengthened since the 2000-01 budget. The expected underlying cash surplus for 2000-01 has increased by $1.5 billion to $4.3 billion, with a revised fiscal surplus of $8.4 billion. This improvement was entirely as a result of parameter changes—that is, changes that are not the result of explicit policy decisions of government but rather the drivers of revenue and expenses that result from existing policies such as economic growth, inflation, wages, employment levels, and the number of Centrelink beneficiaries. Assumptions about strengthening revenue added more than $4 billion. Expenses grew by almost $1 billion and net capital investment was adjusted by almost $400 million. The effect of the government's policy decisions made since the budget was handed down, however, had quite the opposite effect

on the budget's bottom line. Policy decisions taken between the budget and the midyear review weakened the budget bottom line by more than $2 billion over the remainder of this financial year and the three out years.