



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**  
**TELECOMMUNICATIONS**  
**COMPETITION BILL 2002**

**In Committee**

**SPEECH**

**Monday, 9 December 2002**

BY AUTHORITY OF THE SENATE

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# SPEECH

**Date** Monday, 9 December 2002  
**Page** 7465  
**Questioner**  
**Speaker** Cherry, Sen John

**Source** Senate  
**Proof** No  
**Responder**  
**Question No.**

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**Senator CHERRY** (Queensland) (4.52 pm)—I move Democrat amendment (1) on sheet 2760:

(1) Schedule 2, page 14 (after line 4), after Part 1, insert:

*Part 1A—Merit selection of Chair and members of Commission*

**4A At the end of subsection 7(3)**

Add:

; and (d) be satisfied in accordance with section 7A that selection for appointment is made on merit.

**4B After section 7**

Insert:

*7A Procedures for merit selection of Chair and members of Commission*

(1) The Minister must by writing determine a code of practice for nominations and appointments to the Commission that, in addition to the matters contained in section 7:

(a) sets out general principles on which nominations and appointments of members to the Commission, including the Chair, are to be made, including but not limited to:

(i) merit; and

(ii) independent scrutiny of appointments; and

(iii) probity; and

(iv) openness and transparency; and

(b) sets out how these principles are to be applied to the selection of the Chair and members of the Commission.

(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*.

*7B Independence of Commission*

Before the Chair or a member of the Commission is appointed, the Minister must ensure that the balance of interests on the Commission is such that no one interest may dominate the Commission or derogate from its independence.

The Democrats have moved similar amendments to this in the chamber on many occasions in the past. They seek to ensure that appointments, such as those of ACCC commissioners, are done using a merit based process. The Democrats were delighted to hear the comments made by ALP frontbencher Mark Latham on the ABC program *Insiders* on 24 November 2002, which appeared to suggest that, after many years, we can finally look forward to the support of the ALP on merit based appointments. Mr Latham's comments attacked what he called 'the establishment figures who've had power concentrated in their hands'. His comments about political appointments of mates to the ABC board were particularly strong.

Every Democrat senator has at one time or another called for an end to jobs for the boys. Wherever appointments are made to the governing organs of public authorities—whether they be institutions set up by legislation, independent statutory authorities or quasi government agencies—the process by which these appointments are made should be transparent, accountable, open and honest. One of the main failings of the present system is that there is no empirical evidence to determine whether the public perception of jobs for the boys is correct, as these appointments are not open to sufficient public scrutiny or analysis. It is still the case that appointments to statutory authorities are left largely to the discretion of the minister with the relevant portfolio responsibility. There is no umbrella legislation that sets out a standard procedure regulating the procedures for the making of appointments. Perhaps more importantly, there is no external scrutiny of the process and merits of appointments by an independent body.

The Democrats have put up amendments designed to compel ministers to make appointments on merit on 17 occasions in this place over the last few years, and this will be occasion No. 18. Every single time, Labor and the coalition have combined to block them. Thus the trend of parachuting mates into lucrative positions on various boards and authorities at the expense of the taxpayer continues. Perhaps Mr Latham's remarks indicate that Labor is at last in the process of changing its mind. Another encouraging sign was the ALP's recent support for Senator Murray's notice of motion which noted the rejection of Graeme Samuel by a majority of the states and territories as nominee deputy chairman of the ACCC. In that motion the Senate asked the federal government:

(i) to ensure that it consults fully with the state and territory governments regarding Professor Fels' replacement, and

(ii) to establish criteria for the selection and appointment process that include not just selection on merit, but that any candidate should be demonstrably independent, and have a strong interest in consumer and small business needs.

Even the British eventually accepted appointments on merit. Lord Nolan, head of the 1995 Nolan commission, managed to persuade the UK government to accept that appointments should be based on merit. He set out key principles to guide and inform the making of such appointments. They were: (1) a minister should not be involved in an appointment where he or she has a financial or personal interest; (2) a minister must act within the law, including the safeguards against discrimination on the grounds of gender or race; (3) all public appointments should be governed by the overriding principle of appointment on merit; (4) except in limited circumstances, political affiliation should not be a criterion for appointment; (5) selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds; (6) the basis on which members are appointed and how they are expected to fulfil their role should be explicit; and (7) the range of skills and backgrounds which are sought should be clearly specified. The UK government fully accepted the committee's recommendations. The office of the Commissioner for Public Appointments was subsequently created, with a similar level of independence from government as the Auditor-General, to provide an effective avenue of external scrutiny.

I go back to Mr Latham's comments on 24 November, when he finally recognised the importance of appointments on merit, which the Democrats have been advocating so strenuously. In particular, we have referred to and used those Nolan committee recommendations in our amendments. Mr Latham argued, 'Labor should be pro-market but not necessarily pro-business, in the sense that, wherever power and privilege is concentrated, Labor needs to be anti-establishment, to give them hell.' He also commented:

Insiders look after themselves.

You've only got to look at some of the appointments and actions of the Howard Government to see this is an administration that governs for just a small clique of Australians.

They're into preferment, they're into appointments for their mates and this is a real problem.

... ..

We need to break up the insiders and disperse power as widely as possible, particularly to the outer suburbs and the great regions of this nation.

It is hypocrisy for Labor to criticise the Howard government's insider recruitment program and the moralities of corporate responsibility when it is a well-known fact that Labor indulged in the same practice for years. Here are some recent examples. The Bracks government in Victoria has the worst track record on jobs for the boys, and

the adequacy of its methods of appointment has been exposed and heavily criticised. In Queensland, the factional heavyweight Jack Camp was appointed to a \$72,000 a year, four-day-a-week state government job without the position being advertised and without proper procedure. A former Labor Kirner government minister was paid almost \$10,000 over a two-month period for a report that has never been published. Freedom of information documents have revealed that former police minister Mal Sandon was paid \$320 a day for at least 28 days work on a VicRoads road safety strategy. And, of course, there was the appointment of disgraced former Senator Mal Colston to a water board. There are dozens and dozens of other 'mates' examples.

Meritorious appointments are the essence of accountability. Until the notion of jobs for the boys is nipped in the bud, there will not be that much moral difference between the political patronage of Suharto's Indonesia, Marcos's Philippines or Mahathir's Malaysia, where nepotism and favouritism have run rife, and our own system of political patronage.

The amendment I have moved today would insert into the bill a section requiring that a code of practice be determined for the nomination or appointment of ACCC members. It is recommended that the process of appointment be based on merit, be subject to independent scrutiny and have transparency, openness and probity. The bill in its current form has no provision at all for this process, which in my opinion would be negligent to ignore—especially for a body as important and powerful as the ACCC.

We need to establish a workable system to ensure that appointments on merit occur. This amendment does that. The public needs to be reassured that there is an adequate system of transparency and independence where favours are not exploited and mates are not rewarded. Political patronage is corrupt and corrupting. It should be reined in, particularly for a body as important as the ACCC, where its role in the competition regime that we have been discussing is fundamental and where its powers are so overriding in ensuring that the public interest is protected. We need to ensure that the ACCC is independent and fair and that the best possible brains are brought to bear on the task, which is why merit based appointments are so important and why I commend this amendment to the chamber.