

For Parliament or Party: Whose Democracy is it, Anyway?

Senator Cheryl Kernot

‘Whose democracy is it anyway?’ — I guess we often ask that question. When Graham Richardson resigned from the Senate earlier this year, his valedictory speech contained some rather extraordinary insights into the internal workings of the Labor Party. For those of you who did not whip up the enthusiasm to stay up until two o’clock in the morning to hear it, one of Senator Richardson’s more interesting comments was his revelation that Paul Keating had once said to him that ‘the best party officials are those who chloroform the party and make sure we do not have to fight any more’. Senator Richardson went on to tell the Senate — with obvious regret — that his ‘days of chloroforming were over’.

I found this little revelation fascinating because Graham Richardson told it as such a positive story. He clearly agreed with the Prime Minister that the best political party was a nice, quiet, anaesthetised one. He did not see anything particularly wrong with that. In fact, he took a great deal of pride in his role as chief chloroformer. It was a comment which not only said a lot about Graham Richardson, Paul Keating and the Labor Party — it revealed a great deal about what some people think is wrong with our parliamentary democracy.

It raises the question: whose democracy is it, anyway? Do we really have the sort of vibrant, participatory, parliamentary system we like to imagine we have? Or do we spend most of our time excluded from our own democracy, breaking out in a mad burst of democratic fervour every few years at election time before sinking back under the chloroform? My thoughts on this matter are no secret.

In my view, we are moving away from a system of parliamentary democracy where the executive arm of the government is responsible to the lower house and towards a system of *party* democracy where the majority party expects to control both the machinery of government and the Parliament in between elections. That has led to the House of Representatives becoming little more than a rubber stamp for a largely unaccountable executive.

The House of Representatives these days is not much more than a soap opera — and a rather mediocre and predictable soap opera at that. It sometimes produces good theatre, but we all know at the end of the day exactly how it is going to turn out. It is like being in some sort of endless karmic loop, constantly winding up at predetermined destinations with no ability to influence the course of events along the way. Just think about it — the House of Representatives as a metaphor for life: what a depressing thought.

Australians generally do not give too much thought to the notion of democracy. Yes, we feel quite proud of ourselves for living in a democracy and we see democratic principles as the cornerstone of our society, but I do not think we give enough thought to what these concepts actually mean in practice. If, by ‘democracy’, you mean a political system with regular elections, but with no serious challenge to the government between elections and no inconvenient appeals to the Supreme Court as in Victoria, for example, then you are probably perfectly happy with the way things are. You are probably also a Victorian businessman with a financial interest in racing very fast motorcars and with an ‘I love Jeff’ sticker on your refrigerator. But if you consider democracy to be a system in which ordinary citizens have the opportunity to play some meaningful role in the management of our society, then you probably feel we are moving further and further away from that sort of society.

It is a dangerous age for democracies everywhere. It is an age where, as the American philosopher Noam Chomsky has pointed out, the hallmark of the so-called ‘free’ societies is the abdication of rights by the majority of the population through the manufacturing or the engineering of their consent. That is a bleak view of democracy; a view which says that elections do not really mean all that much and that we are being indoctrinated to accept the concentration of political and economic power in fewer and fewer hands.

I do not feel quite so bleak about our own democratic processes, but I think we would be well advised to heed the warning signs. One of those warning signs is the increasing failure of our parliaments to act as protectors of democracy. This state of affairs goes completely against the original central notion of parliamentary democracy, which was that the executive arm of government was *responsible* to the lower house. In other words, the lower house was supposed to keep the executive — the cabinet — in check. But that no longer occurs.

Although I am not as critical of disciplined parties as other people, I do think some of the blame for this situation can be slotted home to the rigid control exercised by the major parties over their parliamentarians. In effect, as Harry Evans, the Clerk of the Senate, has pointed out, ‘we no longer have parliamentary government, but party government’. We have a system where the electorate chooses between two very similar big parties at election time and then the majority party controls the whole machinery of government until the next election.

This view of democracy is an interesting one because it is not unrelated to the economic rationalist view of the world. In this scenario, Parliament becomes a ‘political prize’. Geoffrey Brennan and Alan Hamlin summed up this view in an article last year in the *Australian Journal of Political Science* in which they said:

The basic idea here is that control over the parliament is the prize awarded to the winner of an electoral competition. Seen in this light, the details of parliamentary procedure are of derivative interest: attention should focus on the electoral competition itself as the major determinant of political outcomes

... Parliament is reduced to a window-display of policy alternatives [and] parliamentary procedure is reduced to window-dressing.

In other words, electoral competition is the be-all and end-all. The operation of that competitive process becomes the primary focus of the system and we all become obsessed with polls rather than policy. Some people call this, rather quaintly, the 'public choice' analysis of democratic institutions. It is a sort of 'economic rationalism for politics'. It is intellectually bankrupt, unprincipled and nothing more than ideology masquerading as some sort of respectable theory. This is also the theory much loved by that great intellect of American politics, Ronald Reagan. It is the theory which sent America's deficit into orbit — so why we should be even remotely interested in picking up any of it, is well and truly beyond me.

But, whatever label you want to put on it, this is essentially the same approach as muttering about getting rid of the Senate or dismissing criticism by saying that government should just be allowed to 'get on with it' between elections. This approach effectively relegates Parliament to a minor role in the democratic process, a relegation which — in Australia — has had two significant effects.

Firstly, the role of Parliament has been seriously eroded. These days, it seems, a prime minister or a premier considers Parliament to be not much more than a relatively minor and time consuming nuisance which has to be dealt with before getting on with the *real* business of running this country.

Secondly, at the federal level it has resulted in a clear shift in the role of scrutiny of the Government from the House of Representatives to the Senate. Earlier this year Les Carlyon in the *Age* newspaper commented:

The best check we have on elective dictatorship is the Senate, where the Government lacks the numbers to turn the Senate into a rubber stamp. There is much to be said in favour of Cheryl Kernot and her Democrats, and of the Gumnut Twins, and of Senator Bishop and other free and feisty spirits. If they don't keep the bastards honest, they at least keep them edgy.

But whether you are talking about the nuts and bolts of legislation or the sheer pleasure of irritating the Prime Minister on a regular basis, the Senate's role has become — and I think the presence of the Democrats has had a lot to do with this — one of promoting accountability. That is a crucial role in a democracy. The very essence of a democracy is not just the right to choose who is going to govern you, but also to have some opportunity to scrutinise, amend and even reject the measures chosen by those who are doing the governing. Shoring up executive power at the expense of parliamentary responsibility and public accountability is a dangerous game to play.

The Treasurer's refusal earlier this year to release to the Senate the Foreign Investment Review Board advice on the sale of Fairfax is a case in point. Mr Willis claimed — and still claims, in fact — that publication of that advice would deter bureaucrats from giving frank and candid advice.

The truth is that secrecy is more often a recipe for sloppiness at best and corruption at worst. I believe that public exposure encourages accuracy and ethical behaviour. I do not accept that

Australians do not have any rights at all to see the documentation and advice on which crucial decisions about the future of this country are being made.

The Auditor-General — not currently a wildly popular man in government circles — says that there are minimum standards which the public can rightly expect from government. These are that: administrative processes be fair and open; decisions be based on principles supported by documented reasons; and those involved in making decisions be accountable for their decisions.

I agree with the Auditor-General. I think these principles can apply to executive government. I can see no advantage in encouraging or perpetrating a system which is founded on secretive decision making. That path leads to cronyism, corruption and a loss of confidence in our democratic and parliamentary processes, to say nothing of WA Inc., the Bjelke-Petersen years in Queensland and the fiasco of the State Bank in South Australia.

This problem of the release of documents is not confined to the Keating Government. 'Public interest immunity' is a bit of new jargon which seems to be popping up all over the place. I notice that Premier Jeff Kennett in Victoria has suddenly discovered several new and exciting ways to use the phrase 'commercial confidentiality'. In my state of Queensland, Premier Wayne Goss has resorted to wheeling trolley loads of documents through a cabinet meeting in order to give them retrospective cabinet status.

Many of you will be familiar with my efforts to tackle the government on this question of the release of documents. That is because the Democrats believe that Parliament has the right to obtain any information which is not classified as secret or private by a law passed by Parliament. I do not want to see people's tax records or their social security files. Even if I were so inclined, I could not do so because there are some very specific pieces of privacy legislation covering that sort of information. But there are no such provisions, for example, in the *Foreign Acquisitions and Takeovers Act*.

The Government can make all sorts of claims about material it wants to keep secret — that it is not in the public interest, it is commercially sensitive, it would prejudice the government's business dealings or negotiations or whatever — but ultimately it should not be able to withhold that information from the Parliament. That view accords with all the legal advice we have seen on this topic and with the practice of courts in dealing with claims of crown privilege. Interestingly enough, Gareth Evans got the same advice in 1982 when, as shadow attorney-general, he tried to obtain certain tax evasion documents from the Fraser Government.

As my second attempt to resolve this impasse, I have just proposed the setting up of a committee of party leaders in the Senate — currently that would be Senator Gareth Evans, Senator Robert Hill and myself — to look at documents the Government has refused to release to the print media inquiry. The idea is that the committee, under very strict secrecy requirements, would look at the documents in camera, obtain whatever advice it needs and then report back to the Senate recommending either full disclosure or disclosure with conditions attached. This is a far from satisfactory outcome — but it does give the Government some leeway in that it provides a screening process, similar to that used in civil courts, without cutting Parliament out of the process altogether. It may also lead beyond the print media inquiry to a permanent committee with power to look at the disclosure of documents in general. As I said, it is not my ideal way of getting a government to be

accountable, but it does demonstrate that there are a variety of ways in which the Senate has some prospect of calling the executive to account.

In my view, we can set up processes within the Parliament which promote accountability. We can set up structures which avoid the excesses of unrestrained and unaccountable executive governments. Unrestrained and unaccountable executive government is not democracy. It might be a system which fits nicely into some theory or analysis of institutional behaviour, but it is taking us further and further away from a participatory political process and into the realm of what American Professor Mark Petracca has called 'the professionalisation of politics'. He argues very strongly that 'the professionalisation of politics is incompatible with the essence of representative government'.

In a similar vein, the American historian Daniel Boorstein argues that the professionalisation of politics threatens to undermine what he calls 'the vitality of the amateur spirit' — a spirit he sees as being essential to the survival of, in his case, American democracy. He says that 'amateurs' are being excluded and alienated from the political process and that the process is becoming more and more removed from ordinary Americans and becoming more the province of a kind of 'class' made up of professional politicians, political journalists and lobbyists. This is a dramatic view, but I think it points to some of the real dangers which lie behind the push for executive government at the expense of parliamentary democracy.

For a start, we have to be aware that there is a growing feeling in Australia of dissatisfaction with the processes of government. I found it very interesting recently when I got up on a platform with Peter Reith and Ted Mack to talk about citizen initiated referenda. Despite being unanimously unpopular with professional politicians, lobbyists, political journalists and all of the other 'political game players', the idea of at least a limited form of citizen initiated referenda strikes a positive chord with a lot of Australians. I think it strikes that chord because a lot of people are simply fed up with the increasing power of the executive government and with their increasing alienation from our political processes. They know that something needs to be done.

I am the first to concede that there are obviously some problems with citizen initiated referenda, but I think the notion at least deserves some consideration. I point to the *New Zealand Citizens Initiated Referenda Act 1993* because I think it contains some worthwhile features. It makes provision for referenda to be held where the signatures of at least 10 per cent of registered voters are obtained within twelve months of a proposal being lodged with the Clerk of the House of Representatives. That is quite a high proportion of voters and is aimed at ensuring that any proposal put forward is of concern to a substantial section of the community.

Secondly, the New Zealand act has several procedural 'checks and balances' built into it, one of which provides for the referendum to be delayed for up to two years on the vote of two-thirds of the New Zealand Parliament. The result of the referendum is non-binding, that is, the government is not legally required to give effect to the result. The New Zealand Minister for Justice, Douglas Graham, recently said that the government had opted for non-binding citizen initiated referenda because it 'gives people the freedom to engage the entire nation in debate on any topic of their choosing', while at the same time ensuring that Parliament retains 'the flexibility to protect fundamental freedoms and the essential powers of government'.

I am not suggesting the New Zealand approach is an ideal one. I am not even suggesting that it is one that could be successfully transposed onto the Australian parliamentary system. But I do think it demonstrates that it is possible to have a mature and sensible debate about citizen initiated referenda and to come up with a practical piece of legislation. I think the concept has merit precisely because it sets up an avenue whereby ordinary people, those with the true 'amateur political spirit', get some direct access into the parliamentary process.

That is surely an important and desirable feature of any functioning democracy. We need to start talking about what we want the cornerstones of our democracy to be. That is going to involve discussion about a whole lot of things which take us well beyond the issues of parliamentary processes and public accountability. I do not think we should be afraid to look at electoral reform; perhaps at the possibility of multi-member electorates for the House of Representatives.

I see multi-member electorates and forms of proportional representation for the House of Representatives as offering us the best opportunity for a diverse political system in Australia, because those sorts of reforms also offer women, minority groups, smaller parties, independents and new parties a fairer and more equal shot at political representation. Some people would think they might be more democratic than quotas.

I do not think we should be afraid to look at constitutional reform; to examine our Constitution to see whether or not it remains relevant to Australians in the 1990s. For example, the Democrats have been arguing for some time for an environmental head of power in the Constitution. It seems absurd to me that, despite the concerns of many Australians about the environment, the Commonwealth still lacks the constitutional clout to bring the states into line on a range of environmental matters of national importance. That is the significant thing — national importance. In fact, the Australian Constitution does not even mention the environment — an omission which considerably weakens the Commonwealth's ability to protect the environment in the national interest.

I do not think we should be afraid to talk about whether or not we need three tiers of government; whether we should rearrange responsibilities between the Commonwealth and the states; and whether it is time to even redraw state boundaries or increase the number of states or move to regional government, or whatever. I think we should also be talking about citizenship; about what it means to be an Australian.

I noticed that the National Centre for Australian Studies at Monash University in its paper *How to be Australia* has called for a pause in the republic debate 'to consider that what most Australians share in common is not a *national identity* but a *civic identity*'. The Centre says we need a basic public declaration of what it means to be an Australian and it talks of shared civic ideas such as a commitment to the rule of law, a commitment to the principles of parliamentary democracy, a commitment to equality and 'a commitment to the custodianship of the land we share'.

Other writers are concerned about what they see as an attempt to return to a 'privatised view of citizenship'; a view which reduces citizenship to a question of replacing *entitlements* with *obligations*. We have privatised everything else, why not privatise citizenship? Others have talked of the need for a more pluralist emphasis; one which recognises diversity and difference as the cornerstones of citizenship. All of these things should be on the public and political agenda.

I meet with, talk to and get a lot of letters from people who are very angry at what they see as the erosion of representative democracy in Australia. They are not of the mindless ‘if it ain’t broke, don’t fix it’ school of thought. They think it *is* ‘broke’, in more ways than one, but unfortunately they do not want to be the ones to fix it. They do not want to be the ones putting up radical or even challenging new ideas for change. They do not want to be responsible for the future. But, of course, we are all, at some level or another, responsible for the future; and part of taking that responsibility, is to be unafraid to debate and discuss new ideas.

After all, it is not just a question of parliamentary or electoral reform: it is a much bigger question about what sort of nation we want Australia to become. It is also a question of what James Walter, Professor of Australian Studies at Griffith University, called ‘the failure of political imagination’ when he gave a lecture here in Parliament House a few months ago. It is about moving on from our current ‘lowest common denominator’ politics where, if a new idea sticks its head up out of the middle ground, you either run a mile in the opposite direction, or bash it on the head until it is dead. It is about fostering a representative democracy and a parliamentary process in which alternative voices can be heard.

A time is coming in the not too distant future when we will really have to fight for the future of minority parties and alternative views. We will have to fight for the right of those alternative voices to be heard in our parliaments. We will have to fight for the right to representation for those Australians who do not want to vote for the major parties. In short, this battle is not just about the existence of the Senate, or its future as an important check on executive power — although the Senate is likely to be one of the battle grounds — this fight is about the future of a vibrant, participatory Australian parliamentary democracy. An increasing number of us think that is worth fighting for.

Questioner — I think that the level of debate in the House of Representatives would be greatly increased if there were a Speaker who was not on the government side; someone who perhaps was towards the end of his parliamentary career and had the respect of all sides. Is there any way that action could be taken towards such a thing?

Senator Kernot — Not easily in the House of Representatives. It would probably be slightly easier in the Senate to work towards the independence of the President. There has already been quite some discussion about the person maintaining a role in a major political party, but not taking an active role in any of that party’s committees, subcommittees, or caucus committees. But we still have a long way to go to get to a negotiated outcome on that.

I think that would be harder to do in the House of Representatives because of the two major parties. There is always the problem of an opposition thinking that one day they might be in government and they might want the same control themselves, so they do not push the party in power as hard as they might or ought to.

Questioner — In the 1990 elections, why did the Democrats not adopt the policy in every electorate of recommending that the incumbent be put last in the House of Representatives vote and the other major party’s candidate be put second last. You would be in power if you had done that.

Senator Kernot — I do not think so, but it is a nice thought. The answer is because our members vote before every election on the form our voting recommendation will take. Our

decision for the last couple of elections has been that second preferences go to like-minded groups and then after that it is up to the individual. We do not recommend one above the other. We say we would like to believe that voters are intelligent enough to make up their own minds about where they want their preferences to go. We want them to vote for us first, but under a preferential system, in the event that the second preference becomes important, then your first vote flows on at full value to its second preference.

In the 1990 election that you refer to, over one million Australians voted for the Democrats as their first vote on the ballot sheet. That did not translate into any seats in the House of Representatives. That is not because of what we did, it is because of the electoral system. Because of the preferential voting system, the National Party had less than 600,000 first votes which translated into something like seventeen seats. Electoral reform is a really important ingredient for thinking about better representation in the future.

Questioner — On the subject of electoral reform, at this stage do you have a preferred model for the House of Representatives?

Senator Kernot — Yes. I would like to see a form of multi-member electorates — probably the Hare-Clark system. It is as simple as that. Australia is no longer neatly divided into Labor and Liberal — capital and labour. It is a complex, diverse and multi-faceted society. A lot of people do not feel comfortable with being reduced by the language of politics — and the language of opinion polling in particular — to, ‘Here are your two choices. Take it or leave it.’

I would love to change the language of politics in this country. I am starting my crusade with the word ‘bipartisan’, which implies a choice of two. There are more than two political party groupings of significance in this country from which we can choose. The next time that you go to use the word ‘bipartisan’, I appeal to you to think of other terms such as ‘cross-party’, ‘multi-party’, or even ‘diverse’ will do. We have to challenge the language of politics.

Questioner — I would like to refer to citizen initiated referenda. It seems to be that too little attention is given to the complexity of public issues and, therefore, to the nature of the questions that are put. The focus tends to be on the number of people that are needed to sign an original notification that a referendum is required. For CIR to be viable, it should be recognised that public issues are complex and voting should operate on a preferential basis between alternatives.

Senator Kernot — That is a very sound suggestion which should form part of the ongoing debate. Some countries suggest that perhaps citizens cannot be trusted to vote on economic matters because they may not recognise the effect that a decision made in isolation may have on the wider budget decisions. That is a legitimate view that we should consider. That does not mean that we have no say. We have got to find the right way through it. The New Zealand example is certainly worthy of further discussion.

Questioner — My question also relates to citizen initiated referenda on a more basic level. The ACT’s Legislative Assembly has a bill presently before it for citizen initiated referenda. Some independent voices in the Assembly have referred that to committee for consideration — apparently not just on the mechanics, but because they have doubts on the idea in principle. Of the three members you mentioned as speaking on the platform of CIR, Ted Mack has now announced his retirement and Peter Reith has been advised not to make any further

statements on the matter. I wonder whether you, as the one survivor, see yourself as having any input into that process, perhaps by suggesting to people on the Legislative Assembly that it is a good idea and that they ought to proceed with a bill on this subject?

Senator Kernot — I have had a look at Kate Carnell's bill and I think it is pretty innocuous. In terms of the principle of citizen initiated referenda, I think it would be worth pursuing. What I say to members of your assembly would not make a huge difference one way or another. It is their right to assess the legislation on its merits as they see it.

Questioner — Would you also advocate looking at reforming the parliamentary process by having a full vote for the Senate, rather than having the situation where the small states, such as Tasmania, have the same number of people elected to the Senate as New South Wales? Could there be some reform in that area?

Senator Kernot — Yes, I would. We pretend that the Senate is a states house — actually, we do not even pretend anymore. Occasionally, a bill comes in which would have a different effect on one state from another. We are an extension of a party house; to say otherwise would be dishonest. But the concept and function of an upper house remain as important as ever.

The issue then becomes whether we look at demographically equal regions, rather than the existing demographically defined states. I do have some problems with the present unequal representations in terms of the number of people in the population who are represented by twelve senators in each state. I certainly do not subscribe to the view that therefore an upper house is undemocratic or unnecessary.

Questioner — I would like to express some doubt about citizen initiated referenda and the idea of an expendable pluralistic democracy. In the case of citizen initiated referenda, surely the result would be an undermining of the coherence of the government policy. The result is to bring in an avenue for the most emotive issues to come up. For instance, the death penalty would quite possibly be supported by a majority of electors. We see this in America. In fact, I would suggest that America is a warning against some of your proposals. I am not personally objecting to the underlying tenet of them, but in practice America has a great deal of pluralism. We see the result at the moment where the present presidency is being undermined by an excess of access to information about the way the government is run.

Senator Kernot — I do not agree that there is always a coherence of government policy in the first place, because very often it is the end result of an incredible balancing of competing vested interests where money sometimes plays an important part. I could point to an equal number of American examples which include the propositions to outlaw the use of nuclear power and propositions that have been carried by majorities against tobacco advertising when tobacco companies have spent a fortune trying to persuade voters to do the opposite.

We should not have a lowest common denominator view of what Australians might, or might not, vote for. It is the principle that is important. How do citizens, between elections, have any opportunity at all to influence the agenda of this country? Thank goodness we do not talk about mandates quite as much as we used to. The recent elections have been reasonably close; in fact, the last election was very close. The incredibly diverse and complex range of issues which a parliament debates are never canvassed in an election campaign.

It is very difficult for the government of the day to gauge how citizens feel about these issues. We cannot undermine confidence in public institutions, but at the same time we must guarantee the rights of citizens to have an input into the decision making which decides the direction of this nation. Unfortunately at the moment that right is given to electors at the ballot box on a limited range of issues once every three or four years. I mentioned citizen initiated referenda as an example of something that we should not be afraid to discuss. That is what we are doing.

Questioner — If you were to change the Democrats' policy on compulsory voting, would you adopt the same set of standards that you apply to citizen initiated referenda to voter initiated legislation? While talking about things Roman, what is your response to the proposal of Frank Brennan, the Jesuit lawyer, to bring an Aboriginal representative into the Senate?

Senator Kernot — We recently reviewed our compulsory voting policy and our members voted to retain it, so I will not be changing it. That is the first point. As to your last point about an Aboriginal member of the Senate, that is an example of affirmative action that I would be prepared to consider.

Questioner — You spoke earlier about the fact that Australians are losing their democratic rights, in many cases without even knowing it, and that some of that is being done through the manipulation of their consent. I see that as a real problem in today's world. How can the general public fight through the very biased reporting of selected issues?

Senator Kernot — I do not see bias to be the problem as much as omission. It is very hard sometimes, given the orchestration that surrounds an issue, for the journalists of the day to decide that the issue is the issue, rather than what surrounds the issue is the issue. It concerns me that the agenda is set notionally in the House of Representatives, where the government introduces its legislation. The government has the numbers and very often the opposition does not even put up any amendments. It waits until the legislation gets to the Senate. The cultural and political focus of the press gallery is still very largely on the House of Representatives.

We have started to challenge that culture to the extent that I no longer get phone calls asking, 'Are you going to block it?' as the first question. There is a little more interest concerning the issues that we disagree with in the upcoming legislation. I would like to encourage you by saying that I think it is improving slightly. At the same time, citizens have to be much more demanding of their members of parliament. You do not have to fall for the old trick of members saying, 'Oh, I really disagreed with it, but I had to vote for it.' Why did they? Citizens have to demand to see the *Hansard* and look at the votes. Look at the record of your elected representative. Have more dialogue with him or her. It is a two-way process. It is not just the media, it involves your participation and vigilance as well.

Questioner — What would you think of a proposal for a female Senate and a male House of Representatives?

Senator Kernot — It nearly is!

Questioner — It would be better the other way around.

Senator Kernot — You think it would be better the other way around: better if we were setting the agenda. I think there are a lot of reasons for women being represented in greater numbers in the Senate, and long may it be that we will increase in numbers to the point where we will become equally represented. It is much harder in the House of Representatives. I do not know what a gender exclusive house of parliament would be like, but I thank you for that challenging thought.

Questioner — Could you explain in more detail what you mean by accountability. For example, what do ministers have to do to meet a criterion of accountability?

Senator Kernot — When we were debating an accountability package as a result of the sports rorts affair, one of the things we thought was lacking, and something that was evidently lacking in the Marshall Islands issue as well, was a contemporary and agreed upon code of ministerial conduct. One of the outcomes we achieved in the accountability package was to revamp the workings of a committee which was set up to look more closely at that issue. That committee is still meeting and considering this, and I have seen some drafts of their suggestions. Missing from those suggestions was the matter of writing references for relatives. Should that be included in a code of conduct for all politicians or ministers? Or is that the right of our members of parliament as ordinary citizens anyway?

I think that since the early notions of Westminsterial systems, responsibilities of ministers and accountability, we have had the information revolution and the mini-skips of paper across the desk. At the same time we have also had a growth in the use of consultants, personal advisers and party advisers in addition to departmental officers. Nowhere have we codified and sorted out appropriate delegation of powers and responsibilities for each of these layers which make up a part of a ministerial scope. So I cannot give you a definitive answer.

Questioner — Recently a second chamber has been introduced in the House of Representatives to cope, I think, with the flow of legislation — all these bills that they want to pass. Is it necessary to have this avalanche of bills and, if so, who is generating it?

Senator Kernot — I think we ask that question between now (September) and December every year: where do these hundred bills come from? A lot of them come from the budget processes, in order to outlay moneys on particular programs in quite complex ways, with predetermined start-up dates such as 1 January or 1 July of next year. Others are ongoing. We have a long list of levies for honey and fish and beef and so on, and these are reviewed. The level of levies is reviewed or increased every year, so there is a whole range of those that come through as a matter of course. But the second chamber of the House of Representatives, as I understand it, is to speed up the workings for non-controversial legislation. In the Senate we have a different system. We have a system of committees which meet on Fridays. Any bill which has any element that warrants greater scrutiny can be referred to the so-called Friday committee. We can call witnesses, and we do. I am in the middle of a hearing on the Aboriginal Land Fund Bill at the moment.

The idea of using a Friday committee is that in that committee we talk about the amendments we may be moving when we get back into the committee of the whole on the floor of the Senate. It is supposed to save time, but it does not exclude you from raising further issues or moving different amendments once you get there. It is an attempt to balance the time that is

necessary for complicated and often controversial legislation to be adequately scrutinised without taking a week in the Senate itself.

As to your question on the origin of the requests for all this legislation: we do not have citizen initiated referenda, so we cannot blame you. I would have to go away and have a closer look at the names of everything before I could tell you, but a huge bulk of legislation comes from each year's budget.

Questioner — A lot of criticism of electoral reform in the House of Representatives suggests that one of the problems would be instability and inability to cope with government. Can you comment on that?

Senator Kernot — We are a funny lot in Australia. We say, 'We have to have the system we have in the House of Representatives or otherwise we might get Italy.' But until recently, if you examined the number of elections we had had in Australia in the last twenty years you would have found that we had had more elections than Italy; so you have to question the notion of what stability involves. I think the time will come when we will have more than two-party representation in the House of Representatives. It is inevitable. We will then have to cope with whatever consequences that brings. I do not think that is a bad thing. I think a third and a fourth voice in the Senate has strengthened the outcome rather than destabilised it. I often think how challenging it would be to have that other voice or voices in the House of Representatives. I think it is possible to have challenge without instability.