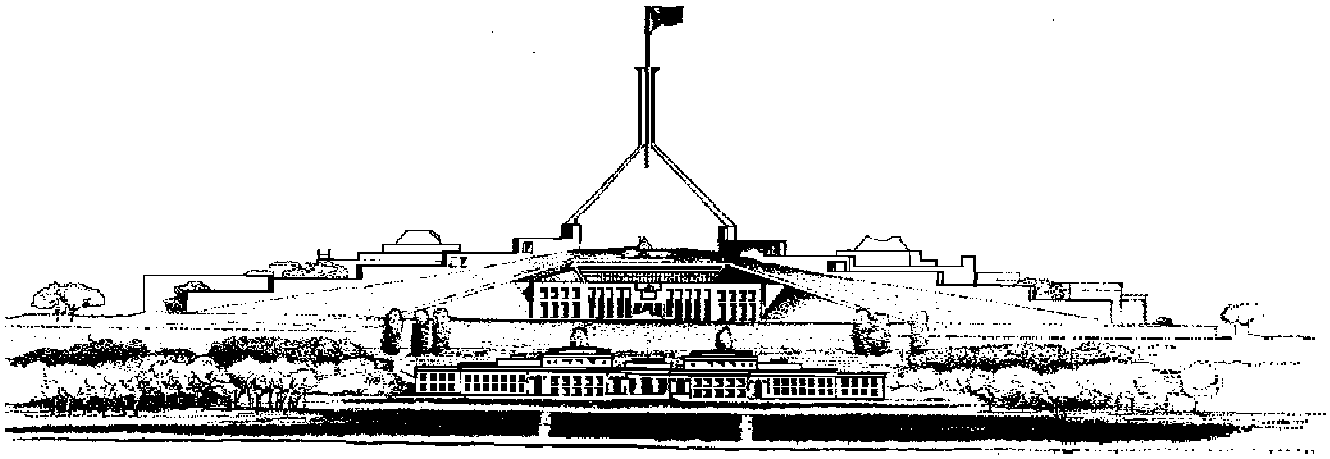
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



SENATE

Official Hansard

FRIDAY, 21 MARCH 1997

THIRTY-EIGHTH PARLIAMENT
FIRST SESSION—THIRD PERIOD

BY AUTHORITY OF THE SENATE
CANBERRA

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FRIDAY, 21 MARCH

Friday, 21 March 1997

The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 9.30 a.m., and read prayers.

DAYS AND HOURS OF MEETING

Motion (by **Senator Campbell**) proposed:

That on Monday, 24 March 1997:

(1) The hours of meeting shall be:

12.30 pm to 7 pm, 8 pm to adjournment.

(2) The routine of business be varied to provide that general business order of the day no. 62, relating to the Euthanasia Laws Bill 1996, be called on at 9 pm.

(3) Immediately after the completion of proceedings on the Euthanasia Laws Bill 1996 the Senate shall adjourn without the question being put.

Senator BROWN (Tasmania) (9.31 a.m.)—I move:

Omit paragraphs (1) and (3).

My amendment would bring us back to the agreed sitting routine for next week. My concern is that we are dealing with the extraordinarily important debate on the Euthanasia Laws Bill on Monday evening. For the first time since I have been in the Senate, those sittings are being left open-ended, so that no matter how far we go into the night on Monday, we will sit, presumably, until that bill is dealt with.

My concern is that, if we go into the committee stage, if the second reading motion is successful, we might find ourselves in the situation where there will be great pressure to truncate the debate on what everybody in this place agrees is an extraordinarily important matter. We have agreed to sitting hours to allow the bill to be debated this week. It deserves to be debated and completed in the coming week. But I foresee this situation where there will be great pressure on senators to not contribute to the debate because it may be after midnight and going into the early hours of the morning. There is an expectation that we might sit all night on Wednesday as well to complete government business. I believe we can do better that.

I am well aware it is likely that the numbers are not here to allow this amendment to get through and I am not going to push the matter. I simply say that the democratic form should be at a premium for this Euthanasia Laws Bill. There is enormous public interest in it. It is going to be put last on the program. The vital final votes on it are likely to be very late at night, if not in the early hours of Tuesday morning. That means it is inaccessible to much of the listening public.

We, as a Senate, feeling this matter is of critical importance to the whole country—and speaker after speaker has said that—ought to be doing better as far as the public participation is concerned. That is what I am defending here. That is what I feel strongly about here. I think Australians ought to be able to listen to this debate in their normal waking hours. They ought to be able to hear the finality of it, if it comes to that, in their normal waking hours. Moreover, I do not think we, as senators, ought to be under undue pressure to get it over and done with. It is more important than that. It deserves the fullest possible and easiest timing so that the debate goes to its full length.

They are my concerns. I know I do not have the numbers, but I felt impelled to bring this amendment to the Senate to say we should stick to the agreement that we made.

Finally, I understand from the Leader of the Government in the Senate (Senator Hill) that an agreement is to be struck that broadcasting of the debate on Monday night will go to the Northern Territory. There is a meeting on Monday morning about that. The Greens feel strongly about that. I know the Democrats do as well. I expect that, if there is any glitch in that, there will be an adjustment to the sitting on Monday. It is critically important that this debate be heard by the people of the Northern Territory. I do not think any scheduling that we make this morning should get in the way of an obligation we have to ensure that the Territory hears the debate on Monday night.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.36 a.m.)—The opposition, as a party, will be supporting the motion that stands in the name of the Manager of Government Business in

the Senate (Senator Campbell). Let me explain very briefly why.

This is, firstly, a matter of government business. Senators in the chamber have negotiated the issue of debate on the Euthanasia Laws Bill to ensure that we deal with it in our Senate program in a way that enables senators to exercise their conscience on both procedural issues in relation to the bill and, obviously, the matters of substance.

As far as the Australian Labor Party is concerned, both are matters of conscience. We have an opportunity here, via the mechanism of this particular motion that stands in the name of Senator Campbell, to achieve just that. In other words, as far as the Labor Party is concerned, at 9 p.m. on Monday it will be up to individual Labor senators to exercise their conscience on these matters. This is the only way this can possibly work.

If Senator Brown—or any other senator for that matter—wished to move that the Senate do now adjourn and if he wished to do that at approximately 11.30 p.m. on Monday, as far as I am concerned that would be a matter of conscience for Labor senators and they would exercise their vote not according to party discipline but according to their conscience. This gives Senator Brown or any other senator an opportunity to do that procedurally at that time or bring any other matter before the Senate.

This motion gives senators the notice that they need that the matter of the Euthanasia Laws Bill will be before the parliament at 9 p.m. on Monday. It means everyone has the notice that is required to deal with the second reading of the bill and any second reading amendments that are before the Senate, and then to deal with the committee stage of the bill in whatever way they see fit. It is sensible; it is proper; and it ought to be supported, in my view, by the Senate. And it will be supported by Labor senators as a matter of party discipline. We are not going to have this particular matter intervened on government business in this way. It is an important principle.

The reason we were comfortable with this matter being dealt with on Monday night of this week—again as a matter of conscience—was that there was no more government business before the chamber. The Manager of Government Business had indicated that he had nothing to bring forward at that time, even though the Euthanasia Laws Bill was not scheduled to be dealt with.

These are important distinctions that I think are properly brought before the chamber. As far as the opposition is concerned, we will support this motion. Each and every Labor senator, if he or she wishes, will be exercising their conscience vote on procedural and substantive matters from 9 p.m. on Monday onwards. That is our approach. It is within this framework that we have determined it appropriate to support the motion before the chair.

Senator CARR (Victoria) (9.40 a.m.)—I will be very brief on the matter. Senator Brown approached me last night concerning this question of an adjournment at 11.30 p.m. I understood him to be saying that he was going to propose something on Monday night for an adjournment at 11.30. I did not understand him to be suggesting that he was going to move an amendment at this stage. As the Leader of the Opposition (Senator Faulkner) has indicated, we are supporting this proposition. I just wanted to clarify those remarks.

Senator CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.41 a.m.)—Could I quickly indicate that the coalition will clearly not support the amendment moved by Senator Brown. I approached Senator Brown, as I did virtually all parties and Independents earlier this week, to seek to manage the handling of a very busy government business schedule and the euthanasia laws private member's bill. There was no agreement in relation to when the voting and potential committee stage of the Euthanasia Laws Bill would be dealt with.

There was agreement that we would spend these past three nights debating the second reading only. The agreement was that we would have discussions as to when the final stages would take place. I initiated those discussions and I have had total cooperation from every senator in this place. I approached Senator Brown two nights ago, I think it was, and said, 'If you have any problems with

these, please let me know.' Senator Brown—and I accept this—said he was unable to focus on this until late last night. He had not approached me until when he walked into the chamber this morning, even though he had indicated he had concerns at the whips meeting last night. So it is very hard to operate in a total atmosphere of consensus when communication breaks down a little like that.

I understand that all senators who want to see the program managed cooperatively and sensibly have agreed that this is a good way to go. I welcome the support of the opposition. I indicate the coalition will be opposing this amendment and seeking support for the motion as it is presented this morning on the *Notice Paper*.

Senator MARGETTS (Western Australia) (9.43 a.m.)—I am pleased to see that the government is at least making an attempt to make sure the procedures are broadcast although we do not yet know the outcome of that. I am just indicating that I will support Senator Brown's amendment.

Amendment negatived.

Original question resolved in the affirmative.

CONSIDERATION OF LEGISLATION

Motion (by **Senator Campbell**) agreed to:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills:

Aged Care Income Testing Bill 1997

AIDC Sale Bill 1997

Hearing Services Administration Bill 1997

Hearing Services and AGHS Reform Bill 1997

Superannuation Contributions Surcharge (Assessment and Collection) Bill 1997

Superannuation Contributions Surcharge Imposition Bill 1997

Superannuation Contributions Surcharge (Application to the Commonwealth) Bill 1997

Superannuation Contributions Surcharge (Application to the Commonwealth—Reduction of Benefits) Bill 1997

Superannuation Contributions Surcharge (Consequential Amendments) Bill 1997

Termination Payments Surcharge (Assessment and Collection) Bill 1997

Termination Payments Surcharge Imposition Bill 1997.

TELECOMMUNICATIONS BILL 1996

TRADE PRACTICES AMENDMENT (TELECOMMUNICATIONS) BILL 1996

AUSTRALIAN COMMUNICATIONS AUTHORITY BILL 1996

TELECOMMUNICATIONS (UNIVERSAL SERVICE LEVY) BILL 1996

TELECOMMUNICATIONS (CARRIER LICENCE CHARGES) BILL 1996

TELECOMMUNICATIONS (NUMBERING CHARGES) BILL 1996

TELECOMMUNICATIONS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1996

TELECOMMUNICATIONS (CARRIER LICENCE FEES) TERMINATION BILL 1996

RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX) AMENDMENT BILL 1996

RADIOCOMMUNICATIONS (RECEIVER LICENCE TAX) AMENDMENT BILL 1996

RADIOCOMMUNICATIONS AMENDMENT BILL 1996

TELECOMMUNICATIONS (NUMBERING FEES) AMENDMENT BILL 1996

TELECOMMUNICATIONS AMENDMENT BILL 1996

In Committee

TELECOMMUNICATIONS BILL 1996

Consideration resumed from 20 March.

The CHAIRMAN—The committee is considering the Telecommunications Bill 1996 as a whole and Democrat amendment No. 56 on sheet 404. The question before the chair is that the amendment be agreed to.

Senator HARRADINE (Tasmania) (9.45 a.m.)—Last night the Minister for Communi-

cations and the Arts (Senator Alston) gave me a response on the 13 millimetres provision in the telecommunications legislation. I asked about the issue of the bearers of the 13 millimetre cable. Does this amendment enable carriers to make decisions to roll out 13 millimetre cables utilising their own poles?

Senator Schacht—They can put up their own poles, Brian; that's right.

Senator HARRADINE—Or is there something in this legislation that requires them to utilise existing structures—for example, electricity poles? It strikes me as being strange that we have a situation where 13 millimetres is exempt when they can go ahead and just string them up on their own poles. They would have to put up their own poles in various streets anyway. I am yet to be convinced, quite frankly, that an exemption should be proposed in respect of the provision in schedule 3.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (9.47 a.m.)—It is hard to imagine that telecommunications carriers would be wanting to put up new poles because, in a sense, they have already covered the country. If you remove the 13 millimetre diameter differentiation line, then they would not be able to continue to put telephone wires above ground unless it was with the approval of the state or territory planning bodies, and they would not have any power of appeal to the ACA. In other words, they would simply be required, unless there was approval to do otherwise, to have all telephony underground.

As I understand it, this debate arises out of concern that new broadband cable roll-outs would be visually offensive, although no-one has expressed concern about existing telephony. This would effectively say that replacing existing telephony or having further overhead telephony would be unacceptable as well. The purpose of having this 13 millimetre differentiation line is to say we can understand concern about new roll-outs of broadband cable. We will draw the line where we think it meets that concern, so any overhead cabling of broadband after the transitional period—say, 30 September—would not be able to go ahead.'

Senator HARRADINE (Tasmania) (9.49 a.m.)—I understand that we went through this issue yesterday at length, and I am sorry to have reopened it. I just wanted to get a response from the minister as to that specific question relating to the erection of polls, and I have that response. I do not want to keep it going.

Senator MARGETTS (Western Australia) (9.49 a.m.)—I do not particularly want to keep it going, either. I feel that the Minister for Communications and the Arts (Senator Alston) has once again used very imprecise language. The statement that 'no-one has expressed concern about existing telephony wires' is clearly incorrect.

As to the communities that are pushing to have underground electricity wires and poles, there is not much point in wires being underground for other purposes and then having new telephony wires. To say that no-one has expressed concern is clearly wrong. The minister knows it is clearly wrong. The minister knows that it has been an issue with communities for a long time. They want to underground all their wires. To suggest that existing wires are not a problem is clearly and demonstrably incorrect. I would ask the minister to correct his statement.

Senator SCHACHT (South Australia) (9.51 a.m.)—I want to get a technical clarification from the minister. Page 467, (b)(ii) says, 'if another distance is specified in the regulations—that other distance'. Minister, does that mean that at any stage in the future, for whatever reason, you could reduce the 13 millimetres by regulation, which is a disallowable instrument, to 0.5 of a millimetre—that, in effect, you could change the 13 millimetres, which is the maximum allowed in the act that is exempt?

For example, if someone turns up with any sort of cable for whatever purpose, and wants to hang it around the place and use the exemption because it is 10 millimetres, or six millimetres or two millimetres, and for whatever reason people are outraged about it or disagree with it, if the minister chose, could he make a regulation to say, 'the maximum external cross-section of any part which

exceeds 0.5 of a millimetre' and that would replace '13 millimetres'?

Senator ALSTON (Victoria—Minister for Communications and the Arts) (9.52 a.m.)—I think on its face it is clear that you can vary it to any level, but it would be against the background of a policy position which says that you are trying to ensure that broadband cabling is caught up in the new regime, that it is not exempted. And if it becomes the fact that—

Senator Schacht—I am not asking, on the policy side of it, as to the consistency of policy so much. I just want a technical answer.

Senator ALSTON—The technical answer is you can vary it or—

Senator SCHACHT (South Australia) (9.53 a.m.)—The minister can make a disallowable instrument and, if the parliament accepted it, you could vary the 13 millimetres down to 0.05 or 0.0001, which makes it nonexistent, or you could vary it up to 25 millimetres. So 13 is the policy standard. But, by disallowable instrument, you can change what they call the distance—which is the width, in common terms, to me—any way you like so long as the parliament approves.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (9.53 a.m.)—I think it is more than just a policy position. It is built into the legislation that it is 13, but it is only—

Senator Margetts—Could I take a point of order, Mr Chairman? Throughout the debate we have had speakers—and in fact it has happened quite a lot, especially with the minister—who have actually spoken over the person who has had the floor. Often it cuts off people who are speaking. Sometimes the minister has stood up while the person still has the floor. I would prefer to have an orderly debate, if possible.

The CHAIRMAN—Yes, I would prefer that too, Senator Margetts.

Senator ALSTON—I apologise by saying that I understood that Senator Schacht, in the normal robust exchange, was not objecting to me volunteering something.

Senator Schacht—It was a technical point—a legal point—which you have now clarified to my satisfaction and I hope to the rest of the senators.

Senator ALLISON (Victoria) (9.54 a.m.)—I do not want to prolong this debate either, but it seems to me the point in this part of the legislation is to prevent the undergrounding necessarily of telephone wires. I am wondering why there is the need for this since, as I understand it, all new telephone wire installation is going underground in any case and that very little is actually aerial. Could the minister tell us whether this is expected to pick up on new installations? I think we are still struggling with the purpose of this. If it is not to underground aerial TV cabling, then is it to cover telephone services—and why, since they are going underground anyway?

Senator ALSTON (Victoria—Minister for Communications and the Arts) (9.55 a.m.)—It is designed to ensure that broadband cabling is undergrounded, except with the consent of the local community, after the transitional period. But, so far as traditional telephony is concerned, because it is below the cut-off point, that could continue to go overhead. If you are asking me about the practical reality, as I understand it, even in country areas the great bulk of Telstra's roll-out is essentially underground, but there are circumstances in which they still do have overhead cabling of telephony.

This whole debate has arisen in the context of the proposed dual roll-out of broadband cabling. I know there are people such as Senator Margetts who would love to see everything underground no matter what the dimension. Obviously, electric power cabling is now caught up in the debate as well. But the reality is that this debate has surrounded the new roll-out of broadband cabling which is thicker than traditional telephony, and it is on that basis that we have sought to distinguish between the two.

Senator MARGETTS (Western Australia) (9.56 a.m.)—I want to clarify the fact that, even if it is less than 13 millimetres, if this amendment goes through it still leaves the state planning authorities with the ability to consider—if particular areas do have overhead

cabling of wires of another sort—having that continue. The minister is saying that he is not going to trust those authorities to make that decision. Yesterday he often said that we don't allow people to make the choice; I believe it is the opposite, and it is the minister who is saying, 'We are not allowing the choice'.

As I understand it, and perhaps he can clarify it, even if this amendment goes through, there is still the ability for local or state planning authorities to negotiate with the carriers—if it is a normal situation and people in that region do not object—to overhead those telephony wires if there is no problem and if that is the normal way it is done in that area. Could the minister please clarify whether there is still the ability with state planning authorities to provide an okay if that is the normal way things are rolled out in that particular area?

Senator ALSTON (Victoria—Minister for Communications and the Arts) (9.57 a.m.)—Yes, that is correct. There will still be a necessity to get local government approval for all cables. The difference is that, for broadband, you will be able to appeal to the ACA. If this amendment is passed you will not be able to do that in relation to what in the relevant scheme of things is a less serious concern. In other words, you would have cable of a smaller diameter that you could not appeal about, but you would have cabling of a larger diameter—which is presumably in your terms even more offensive—and you would be able to go the ACA panel and appeal that.

Question put:

That the amendment (**Senator Allison's**) be agreed to.

The committee divided. [10.03 a.m.]

(The Chairman—Senator M.A. Colston)

Ayes	26
Noes	28
Majority	2

AYES

Allison, L.	Bourne, V.
Brown, B.	Childs, B. K.
Collins, J. M. A.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crowley, R. A.	Denman, K. J.
Foreman, D. J. *	Forshaw, M. G.
Gibbs, B.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K.	Reynolds, M.
Schacht, C. C.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Colston, M. A.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J
Gibson, B. F.	Harradine, B.
Heffernan, W. *	Herron, J.
Kemp, R.	Knowles, S. C.
MacGibbon, D. J.	McGauran, J. J. J.
Minchin, N. H.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Reid, M. E.	Short, J. R.
Tierney, J.	Watson, J. O. W.

PAIRS

Bishop, M.	Macdonald, I.
Carr, K.	Macdonald, S.
Collins, R. L.	Troeth, J.
Evans, C. V.	Coonan, H.
Hogg, J.	Vanstone, A. E.
Kernot, C.	Hill, R. M.
Neal, B. J.	Newman, J. M.
Ray, R. F.	Crane, W.
Sherry, N.	Tambling, G. E. J.

*** denotes teller**

(Senator Bolkus did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Faulkner did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the negative.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (10.07 a.m.)—With the indulgence of the chamber, could I say out loud what has already been said informally, that is, that it was the original intention of the government to allow 10 hours for this debate. We thought, in the scheme of things, that was fairly reasonable because, as you know, there is an inordinate amount of legislation in the pipeline. We have already

gone now for close to 15 hours. We have had nine divisions—half of those were unnecessary—and I am concerned that, when we embark on the next set of amendments which relate to powers and immunities, there is the potential to go for ever.

It is clearly understood that there are three competing models. I do not think for a moment that anything that is going to be said in the chamber will persuade people to somehow roll over and go for someone else's model. I may be overstating the case in relation to the government and the Democrats, particularly if one of their amendments goes down. They might then support the other. The reality is we are all fixed in position.

I understand and respect the competing models, but I simply say that it seems to me there is a big opportunity here to truncate the debate in a sensible fashion. I understand people need to speak because it is clearly a pretty important issue. We have, after all, had a Senate inquiry which spent a lot of time on this issue. As you will recall, even on the Telstra (Dilution of Ownership) Bill more than half the submissions were on this issue. It has been explored exhaustively.

I understand this is another opportunity, but I very much hope that we could keep the debate on the competing models to something in the order of half to three-quarters of an hour because we have another 30 amendments in this area. Otherwise, we are simply going to find that the debating time will blow out unnecessarily in the sense that further debate will not throw any more light on the positions of the parties because they are essentially fixed in relation to this major issue. That is not the case on the smaller issues, and there is scope there for some sensible exchanges. On the big ones, I simply urge the Senate not to see this as an opportunity for yet another series of speeches when it is not going to make any difference.

Senator MARGETTS (Western Australia) (10.09 a.m.)—We have had a tirade of abuse every time somebody has attempted to call a division. If the minister wants the debate to be strung out, this is the way to do it. I can guarantee that from now on, every time he stands and abuses somebody for calling a division, I will stand up and debate that point.

People have the right to have these very important issues on the table. The programming is the government's responsibility. The importance of this bill is clearly established in the community. Not only are the debates important but when important issues come to a vote it is important for many people that the way in which we vote in divisions is recorded. Minister, if you would like the debate to be strung out, this is the way to do it—to stand up and abuse either Senator Allison, me or, in this case, more politely, Senator Schacht after a division. If you would like the debate to be strung out, this is entirely the way to do it.

The democratic process indicates that these issues can and should go on the public record—not only the debate but the way the vote has gone. The fact that you would like people not to know how it has gone is up to you, but there are people who believe that these are very important issues. They affect everyone in Australia. You would like the things that are happening to be put under the carpet. Other people believe that they are important enough to be kept in the open arena.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (10.11 a.m.)—To clarify the situation: I have never at any stage suggested that people should not know how everyone in the chamber votes. There are a number of occasions when it is obviously very important to have a division because the numbers are very close. The only time I have expressed concern—and I have done it in strong terms—is where we are confronted with a situation where it is clear that the numbers are overwhelmingly one way; where it is quite clear where everyone stands in the chamber. In other words, if the Democrats move an amendment, everyone knows that they will support it. If you need to get up and mention people by name, you can do it. But to call a division on a mickey mouse is simply a way of ensuring that there is about 10 minutes or so wasted on each occasion.

All I was urging was that you can make your position abundantly clear—no-one in the

community needs have any doubt, and the last thing I would want is for there to be any confusion as to the position you took—but you do not need to have a mickey mouse division to achieve that objective.

Senator MARGETTS (Western Australia) (10.12 a.m.)—I will clarify the term 'mickey mouse' for those people who might be listening. Perhaps the minister means that democracy is only important when the press gallery thinks there is a difference between coalition and Labor—that is the important vote; that is the vote that needs to be recorded.

But, funnily enough, there are vitally important issues, not just to the people in this chamber but to the people who are being affected, on which the two major parties vote together. Everybody in Australia is affected by telephony. I would like to put on the record that the so-called mickey mouse divisions in which just a few people—maybe just two—might vote in a certain way are often just as important because then the name of each person in this chamber, who is supposed to represent an electorate, not just a party, is put on the record in respect of where they stand on an important vote.

The fact that you call them 'mickey mouse' gives an indication of what you think people stand for. Do they represent their electorate—their states—or do they represent their parties? What you are saying is that representing their parties is much more important than representing their electorate and their constituency.

Senator SCHACHT (South Australia) (10.14 a.m.)—by leave—I move:

(1) Schedule 3, page 461 (line 16) to page 463 (line 7), omit the second and third dot-points, substitute:

- Provision is made for a Ministerial Code of Practice dealing with the exercise of carriers' powers.

(2) Schedule 3, page 463 (lines 18 and 19), omit paragraph (f).

(3) Schedule 3, page 464 (lines 8 to 18), omit the definition of ***defence organisation***.

(4) Schedule 3, page 464 (lines 26 to 28), omit the definition of ***Environment Secretary***.

(5) Schedule 3, page 464 (line 29), omit the definition of ***facility installation permit***.

(6) Schedule 3, page 465 (lines 19 to 22), omit the definition of ***public inquiry***.

(7) Schedule 3, page 469 (lines 4 to 25), omit subclause (1), substitute:

(1) A carrier may, for purposes connected with the supply of a carriage service, carry out the installation of a facility.

(8) Schedule 3, page 470 (lines 10 to 16), omit subclauses (3) and (4).

(9) Schedule 3, page 470 (lines 20 to 22), omit subclause (6).

(10) Schedule 3, page 474 (line 22), omit "(other than activities covered by a facility installation permit)".

(11) Schedule 3, page 475 (after line 2), after paragraph (b), insert:

(ba) a condition requiring carriers to notify a particular person about the activity concerned;

(12) Schedule 3, page 475 (after line 5), after paragraph (c), insert:

(d) a condition requiring carriers to comply with any conditions to which such an approval is subject.

(13) Schedule 3, page 475, after subclause (3), insert:

(3A) The Code of Practice must require a carrier, at least 30 days before beginning to install a facility (other than a low-impact facility) in a particular area to notify whichever of the following bodies is applicable:

(a) if there is a local government body for that area—that body;

(b) in any other case—a prescribed administrative authority for the State or Territory in which that area is situated.

(3B) The Code of Practice must provide that if, within 30 days after receiving a notification referred to in subclause (3A), the body or authority gives the ACA a written objection to the installation of the facility, the carrier must not install the facility unless the ACA has approved the installation under the Code of Practice.

(3C) The Code of Practice must empower the ACA to make decisions:

(a) approving the installation of facilities as mentioned in subclause (3B); and

(b) imposing, varying or revoking conditions of such approvals; and

(c) cancelling such approvals.

(3D) The Code of Practice must provide that, in deciding whether to approve the instal-

lation of facilities as mentioned in subclause (3B), the ACA must have regard to:

(a) whether the advantages that are likely to be derived from the operation of the facilities in the context of the telecommunications network to which the facilities relate outweigh any form of degradation of the environment that is likely to result from the installation of the facilities; and

(b) such other matters (if any) as the ACA considers relevant.

(3E) The Code of Practice must provide that, in determining the matter set out in paragraph (3D)(a), the ACA must have regard to the following:

(a) the extent to which the installation of the facilities is likely to promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services;

(b) the impact of the installation, maintenance or operation of the facilities on the environment;

(c) the objective of facilitating the timely supply of efficient, modern and cost-effective carriage services to the public;

(d) any relevant technical and/or economic aspects of the installation, maintenance or operation of the facilities in the context of the telecommunications network to which the facilities relate;

(e) whether the installation of the facilities contributes to the fulfilment by the applicant of the universal service obligation;

(f) whether the installation of the facilities involves co-location with one or more other facilities;

(g) whether the installation of the facilities facilitates co-location, or future co-location, with one or more other facilities;

(h) such other matters (if any) as the ACA considers relevant.

(3F) The Code of Practice must provide that, for the purposes of paragraph (3E)(a), the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as that question is determined for the purposes of Part XIC of the *Trade Practices Act 1974*.

(3G) The Code of Practice must provide that, in determining the matter set out in paragraph (3E)(b), the ACA must have regard to the following:

(a) whether the installation, maintenance or operation of the facilities:

(i) is inconsistent with Australia's obligations under a listed international agreement; or

(ii) could threaten with extinction, or significantly impede the recovery of, a threatened species; or

(iii) could put a species of flora or fauna at risk of becoming a threatened species; or

(iv) could have an adverse effect on a threatened species of flora or fauna; or

(v) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or

(vi) could damage the whole or a part of a place, or an ecological community, that is essential to the continuing existence of a threatened species of flora or fauna; or

(vii) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or

(viii) could have an adverse effect on an endangered ecological community; or

(ix) could damage the whole or a part of the habitat of an endangered ecological community;

(b) the visual effect of the facilities on streetscapes and other landscapes;

(c) whether the facilities are to be installed at any of the following places:

(i) an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*);

(ii) a place that Australia is required to protect by the terms of a listed international agreement;

(iii) an area that, under a law of the Commonwealth, a State or a Territory, is reserved wholly or principally for nature conservation purposes (however described);

(iv) an area that, under a law of the Commonwealth, a State or a Territory, is protected from significant environmental disturbance;

(d) whether the facilities are to be installed at or near an area or thing that is:

(i) entered in the Register of the National Estate; or

(ii) entered in the Interim List for that Register; or

(iii) registered under a law of a State or Territory relating to heritage conservation; or

(iv) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions;

(e) such other matters (if any) as the ACA considers relevant.

(14) Schedule 3, page 475 (after line 13), at the end of clause 13, add:

(8) The Minister may, by written instrument, determine that a specified facility is a low-impact facility for the purposes of this clause. The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(9) A designated overhead line, or a telecommunications transmission tower, must not be specified in an instrument under subclause (8).

(10) A determination under subclause (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(11) In this clause:

administrative authority means:

(a) the holder of an office; or

(b) an authority of a State or a Territory;

that performs administrative functions under a law of a State or a Territory.

prescribed administrative authority, in relation to a State or a Territory, means an administrative authority that:

(a) performs administrative functions under a law of the State or the Territory; and

(b) is specified in the regulations.

telecommunications network includes a proposed telecommunications network.

telecommunications transmission tower means:

(a) a tower; or

(b) a pole; or

(c) a mast; or

(d) a similar structure;

used to supply a carriage service by means of radiocommunications.

(15) Schedule 3, page 475 (lines 14 to 22), omit clause 14, substitute:

14 Review by the Administrative Appeals Tribunal of decisions under the Code of Practice

(1) The Code of Practice referred to in clause 13 must provide for applications to be made to the Administrative Appeals Tribunal for review of:

(a) a decision of the ACA to refuse to approve the installation of a facility in a case where the ACA has not held a public inquiry under Part 25 about whether the approval should be given and, if so, the conditions (if any) to which the approval should be subject; and

(b) a decision of the ACA to cancel such an approval.

(2) The Code of Practice must provide that if the ACA:

(a) makes a decision of a kind covered by subclause (1); and

(b) gives to the person or persons whose interests are affected by the decision written notice of the making of the decision;

that notice is to include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.

(3) A failure to comply with the Code of Practice in relation to matters covered by subclause (2) does not affect the validity of a decision.

(4) In this clause:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

(17) Schedule 3, page 494 (lines 18 to 22), omit subclause (4), substitute:

(4) In this clause:

this Part includes:

(a) a Code of Practice referred to in clause 13; and

(b) Part 25, to the extent that that Part relates to the holding of a public inquiry about whether the ACA should give an approval under such a Code and, if so, the conditions (if any) to which such an approval should be subject.

(20) Schedule 4, page 513 (lines 23 to 27), omit paragraphs (y) and (z).

This is another significant part of the debate. It is about the planning process and the very

significant change to the immunities powers that the federal constitution gives the federal parliament on telecommunications. These powers have never been in doubt from Federation in 1901. The constitution makes the simple provision that the federal parliament shall have powers for post and telegraph. Whenever this has been challenged, the High Court has upheld that 'telegraph' means all of the ranges of telephony and electronic transmission that have developed in our modern society.

In 1991, when we introduced competition to Telstra and allowed two other carriers to come into the market, the government and the parliament voted that the immunities Telstra had in terms of the installation of infrastructure would be available to the new carriers. We have heard endless debate already about how that was used by and is being used by, in particular, Optus to string up overhead cable in the last two to three years. I am on the record in the Telstra inquiry last year as saying that in 1990, 1991 and 1992 nobody, even those who have now become Optus, ever suggested that there would be overhead cable hung around two million homes as has been done over the last year and is being done at this very moment.

Telstra complained that they would have to provide the interconnect for the second and third carrier and provide the infrastructure; therefore the main argument at the time was over the interconnect fee. Nevertheless, that was the law. I suspect the parliament and the government of the day may well have taken a very different view about the regulations and operation of those immunities in the legislation of 1991-92 if we had been given any indication that the cables that are being rolled out around Australia now were going to be rolled out.

The outrage in the community is overwhelming. I know of no other issue that has had 800 councils, through the Australian Local Government Association, across Australia carry a unanimous decision. They oppose the roll out the way it has been done. We have all been lobbied by councils at a local, state and national level that they want this changed. We have all seen reports of public meetings called by councils and local communities all around Australia when the cables have been rolled out.

I think all sides accept that it is now unsustainable for that pure immunity to continue in a deregulated market post 1 July this year. I think it would be impossible even if we still had the simple monopoly of Telstra being fully government owned. If it had wanted to do this I think there still would have been an objection and a change to the immunities.

The government has proposed a structure of immunities where—we may disagree with this when the transitional period cuts off; that is a debate for later this morning—after 1 July, and we agree with this, no new cable can go up without the approval of the local council or the local community. I think that position has been accepted everywhere, and so it should be. In the future the community wants a say on any major infrastructure and that is not just in terms of overhead cables but the other issue that is quite strong in the community—that is, the placing of mobile telephone towers. I think some 800 have been constructed. With GSM coming and more competition you may even get a doubling of that number. We may see an increase of another 200 or 300 towers, but we hope co-location can stop that.

I do not think the carriers, whether Telstra, Optus or Vodafone, have covered themselves with glory in the way they have dealt with the community in handling the siting of towers. There has certainly been consultation, but, in the end, they have basically said, 'Bad luck, you are getting the tower. We are going ahead with it. We are using the immunity.' This has to be changed.

The structure outlined in my amendments is different from the government's structure in one major respect, and this is the issue that the Senate should vote on. The minister has outlined the areas that are not low impact facilities and I have outlined the areas that I say are not low impact facilities in terms of towers and cables. The opposition wants a simple national system of appeal. First of all, the councils have the right for the first time to appeal and to say no. My model is that if there is a dispute where the council and the

carrier cannot agree on the infrastructure—but I presume that, if the council says no, overwhelmingly it will be the carrier—they can go to the ACA, the body established by this legislation and the federal parliament, and appeal and give the reasons for their appeal.

The panel of the ACA would weigh up those issues. In debate on another occasion the minister suggested that the panel will be representative of a broad range of interests—not just telecommunications engineers but designers, architects, town planners, community representatives as well as technical engineers. It will be a broad based panel. In my amendment we make it clear that there needs to be a balance between the national interest of a national telecommunications system and the local environmental needs and local issues that are of concern to local people. The ACA would have to balance the two up. It is not a zero sum game where they say no and always give it to the carriers or always give it to the local community.

We as a federal parliament, responsible for a national telecommunications system, have to be able to say that there are national interests that, from time to time, may override the strong objections of a local community. They will always create some heat in the local community, but when you have the demands that we have for mobile telephones we require more towers to be built and there will be objections to those. I think the appeal process means that over a period of time we can establish a process where we get the national and local balance basically right. This is a simple process which I have put forward.

It would go straight from the local area if there is a dispute to the ACA. I think the government's proposal has a major deficiency. It allows the state governments to establish a planning process in between local consideration and the ACA appeal. In the end, in most cases you can still appeal to the ACA under the government's model after you have exhausted all the state appeal provisions. In my view, that is unnecessarily time consuming but above all expensive. The lawyers will be expensive and the costs will be borne by the carriers, but councils will also have to pay. I think we have to bear in mind that, by and large, if you are a carrier like Telstra with $15 billion worth of turnover you actually have a very deep pocket for legal expenses compared with an average council in Australia where any cost running into tens of thousands of dollars has an impact on their annual budget.

I also note that the ALGA have indicated that they want to cooperate with the model. They have indicated to me privately that they support the simplicity of the model I have put forward: they understand the simplicity of reduced cost and they know what they are dealing with. But, above all else, they have said they do not trust state governments to intervene between them and the federal ACA. I have to say I have some sympathy for their view about a state government being able to intervene and direct them—as state governments have constitutional power to do—not to be involved in appeals. They can change what local governments can do because they have the constitutional power. The only way you protect local governments from being overridden in this area by state governments is to have the model I have proposed here in amendments 1 to 15, 17 and 20.

Under my model you will end up with one planning process and one code. One national set of guidelines could be informally developed by the ACA, in conjunction with local government, and made available to all 800 councils across Australia to give them guidelines on the sorts of issues they must look at when they are considering an application from a carrier about the siting of an infrastructure. What the minister is proposing is that we end up with eight forms of codes or plans for the six states and two territories. I have no doubt that we will end up with eight different planning arrangements—and that would be costly. In the 21st century it will be a version of what we did in the 19th century, when we ended up with different railway gauges, which has proved so costly to Australia.

Another thing that concerns me is that, so far, there has been very little indication that state governments are even accepting that responsibility. I am indebted to the minister for writing to me on 14 March in response to a question I raised through the Senate inquiry

on telecommunications. I asked what progress had been made with state governments in developing their planning arrangements. The minister outlined—and I would like to table this later, if there is no objection, because it is useful information—the phases in which the federal government is dealing with state governments over the planning arrangements. Phase one, in January and February, deals with information. Phase two, February and March, involves detailed issues identification. Phase three, to be completed by the end of March, involves preliminary decision making and the decision making framework. In relation to phase four—implementation—the minister's letter says:

> It is not possible at this stage to say what regimes the States and Territories will implement.

At this stage, with only three and a bit months to go until 1 July, they cannot say what the regimes will be. It goes on to say:

> However, after the March roundtable there will be three months to implement legislation and/or any uniform procedures.

Can anyone imagine that state governments are going to suddenly introduce—when most of them might even be sitting in that period—legislation and/or a uniform process? It then says:

> The aim will be to have arrangements in place by 1 July.
>
> The Department understands that State and Territory Governments are examining their legislation to determine what changes are necessary . . .

That means, to me, that there is no way we are going to have eight states and territories with planning arrangements in place. There will be a void and, because of that void, who knows what will happen. But there would be no void under my model. It would be able to be done in a clear and transparent way. If the ACA, or now Austel, and DOCA cannot prepare the code and the guidelines in the three months between now and then, I will be very surprised. And if they cannot do it, there is no way the state and territory governments can.

Attachment A to this letter outlines the approach on the issues that have to be considered. It says:

> 1. Access powers. State and Territory governments will need to decide whether to confer carriers with
>
> - access to land
> - the ability to attach facilities to land
> - the ability to do things on land.

That is really conferring major powers back to the states. I hope we do not end up with a fight about what their power is and what the federal power is. According to attachment A, the other issues to be considered include immunities. I think immunities should only be dealt with by this parliament and that in no way should an opportunity be given to states. With regard to the issue of 'Uniformity within the State and between States', again, this is a wish list. This is a hope that we can get uniformity, but there is no guarantee. It then says that there will be a role for local government and, finally, there is information on the treatment of public utilities.

I appreciate that the minister provided this information to me in good faith as a result of my query at the meeting of the Senate committee. But what it portrays is that there is going to be a planning void from 1 July. The only way out of that, as far as the opposition is concerned, is to adopt my amendments which would give councils, for the first time, the right to appeal. It would be a simple, transparent system of appeal that would be efficient and done quickly, and the decision would then be final. The other system is going to drag it on and we do not know what position state and territory governments will take. This is a major issue in the legislation. It is significant that, if the government's position is carried, for the first time we will devolve down to states major powers on telecommunications that we have had for 90-odd years. These guarantee a national telecommunications system and we should continue to maintain that view.

Mr Chairman, I seek leave to table the following documents: *Letter from the Minister for Communications and the Arts to Senator Schacht dated 14 March 1997.*

Leave granted.

Senator MARGETTS (Western Australia) (10.29 a.m.)—Briefly, I think that what Senator Schacht has just outlined is one of the

best arguments I have heard for why we eventually have to have changes to the constitution which give local governments some entity and some role within the law-making process in Australia, because, in fact, they do represent all people in Australia. I am not sure if there are people in Australia who are not covered by a local government of some sort. State, local and regional governments frequently make the changes that are the closest to the people on a daily basis that affect their environment, their planning codes and the way they live.

It seems to me that in the words 'there will be a role for local government', the role is by grace and favour of the Commonwealth government and the state governments. It is one of the best possible arguments for why eventually we have to have some sort of constitutional change which allows local government to have an entity and to be able to represent their constituencies. They are not representing a minority; they are actually representing in each of their areas the views of Australians. They are closer to what is happening in each of those areas, urban and rural, than many people in this chamber can be because of their closeness to their constituencies. In support of the opposition's amendments, we do have to see that part of this problem has been created by the lack of constitutional entity of local and regional governments in Australia.

Senator ALLISON (Victoria) (10.31 a.m.)—The Democrats would prefer to implement the national approval system, which was proposed by the Australian Local Government Association. When that was brought forward at the inquiry, it was clear that they were making a very substantial commitment to pull together every council in this country and to sign off on such an agreement. Our next set of amendments would seek to implement such a model, but I recognise that there is not support for that model.

The government, in its majority report to the telecommunications bills inquiry, said it would not support that model in its current form because it was not thoroughly and fully developed. Even so, we thought it was a far more attractive regime than that proposed by the government. As such, we recommended that the government explore how to improve the proposal and how to make the amendments, but the government just dismissed it altogether.

The ALP has, on its part, sought to develop its own solution, which seems to us to have some merit. In the event that we are not going to get the required support for the ALGA proposal, we will support this one by the opposition, provided that we are convinced that it offers residents greater protection than the model proposed by the government.

One of the concerns we have is how the proposed code of practice is to be developed. Clearly, there will be a lot of debate over the substance of this code. One thing we would like to see guaranteed in legislation is scope for public comment and input into the development of the code of practice. I note that the Democrat amendments Nos 67 and 68, further down the running sheet, impose legislative requirements for public input and consultation in the development of that code.

While this code of practice has a different purpose from the coalition's and the ALP's schemes, the principle of guaranteeing public input is just the same. I am not sure whether our amendments will still fit and apply without conflict with the ALP proposals here, but we would like to see some sort of guarantee of public input. So we will support the ALP proposal.

I want to ask the opposition if they would be prepared to look at a couple of changes to that. We have three in mind. The first one is amendment 13, which spells out the items—

Senator Schacht—Our amendment 13?

Senator ALLISON—Yes. It spells out the items which the ACA must have regard to in formulating the code of practice, which the opposition's proposal is dependent on. Would the opposition be prepared to add to amendment 13, on page 3, a new subclause (d)(v) to clause 3G with wording along the lines of: 'an area that is listed on a regional or local heritage conservation list'? The reason for our suggesting this is that a number of councils have sites which are on their local heritage list. Many councils in Australia are required

by state law to have local heritage lists and items on these lists would not be covered by the national or state lists, yet they are still of very significant heritage value.

Senator Schacht—Can you just read out what you are adding to clause 3G at the top of page 3?

Senator ALLISON—We would like to add the words: 'an area that is listed on a regional or local heritage conservation list'. It is just to introduce the local heritage items.

Senator Schacht—Mr Chairman, I would seek leave to accept that Democrat amendment, if it is the appropriate time to do it now.

The CHAIRMAN—If you are going to accept the amendment, it will have to be in writing. The chair cannot take it down longhand.

Senator ALLISON—Secondly, amendment 15 on page 4, clause 14(1)(a), refers to the possibility for a review of decisions by the ACA in cases where they have not held a public inquiry, and yet the opposition's amendment No. 6 deletes the definition of 'public inquiry'. Will this affect the operation of amendment 15? Should the definition of 'public inquiry' be reinstated there?

Senator Schacht—Where do you want to reinstate it? Your amendment will go on amendment 14, which is on page 4 of my sheet.

Senator ALLISON—I just wonder whether we need to omit the definition of 'public inquiry', which is your amendment No. 6 on sheet 415—that is:

Schedule 3, page 465 (lines 19 to 22), omit the definition of ***public inquiry***.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (10.37 a.m.)—Could I just say in passing, although this is an exchange on the other side of the chamber, that in your amendment at page 3, 3G(d)(iii), 'registered under a law or State or Territory relating to heritage conservation', you have already essentially covered it. And you do it in such a way that there will be a formal record. It would seem to me that that is a much more desirable approach than simply giving local government carte blanche and no records being kept.

Senator ALLISON (Victoria) (10.38 a.m.)—It is not giving local government carte blanche. I have already said that many councils are required by state law to have local heritage lists. That is just one other way of recording those heritage sites. It is not giving local government carte blanche, as you suggest. It just does not seem to be inclusive enough, that's all.

Senator SCHACHT (South Australia) (10.38 a.m.)—I take the minister's point on 'registered under a law of State or Territory'. I do not think that adding what the Democrats want in 3G, which outlines what the ACA must have regard to, is contradictory to what is in 3G(d). I accept the minister's point that the register is pretty important to have. Unless he can show me that that is contradictory—

Senator Alston—I was not suggesting that it is contradictory. I am simply saying that I think it is preferable because the registration procedure will achieve all that you want to achieve. That introduces a significant element of uncertainty whereas the register ensures that you know precisely what is happening in relation to heritage conservation.

Senator SCHACHT—I think on balance that I would still accept the Democrat amendment, though I think the minister has a reasonable point. I do not think it is contradictory, and you may argue, Minister, that if my amendment got up there could be some uncertainty. But if there were an appeal I think the ACA would make a judgment that if there were an attempt by a council to use a loose definition, it would pay the penalty in the appeal.

Senator ALLISON (Victoria) (10.40 a.m.)—I will not pursue that further. We have raised this because of local government concerns. But there are no details on how the code of practice is to be developed. As I said before, we think it is essential that there is public consultation and input and, if it is not written in, there is a danger that it will not occur. I note that Senator Schacht said a little earlier that a code of practice can be informally developed by the ACA, and I think we would resist that because, as I have already

said, the code of practice is an important aspect of the proposal. As we have seen in the past, there is a great deal of interest and expectation that there would be input.

Senator MARGETTS (Western Australia) (10.41 a.m.)—We are discussing immunities, and I have just had a chance to briefly look at Senator Alston's letter that was tabled by Senator Schacht in relation to access powers and immunities. I want to clarify something. Senator Schacht paraphrased, saying that there will be a role for local government, and I would like to put on record that the words in the document state that 'States and territories will need to consider the role of local government'. So it does not actually say that there will be a role for local government.

Senator Schacht—That is the minister's. That is not mine.

Senator MARGETTS—I know, but it is just strengthening the argument that we are having at the moment that currently it does not actually guarantee a role for local government; it just says that states and territories will think about whether or not local governments have a role.

The CHAIRMAN—Senator Schacht, could I just ask whether you wish your amendment to be amended?

Senator SCHACHT (South Australia) (10.42 a.m.)—Yes, I do. The first suggested amendment by the Democrats suggests a new subsection to 3G on my document 415: 'an area that is listed on a regional or local heritage conservation list.'

Senator Allison—We see it being inserted at the bottom of page 3 after (d)(iv) as a new section (v), just before the (e).

Senator SCHACHT—I accept the Democrat amendment. I now take the minister's point even further that in the same clause (d) there is that register under a state or territory relating to heritage conservation. This is a regional or local heritage list. If councils believe that this is an open-ended definition that they can claim anything in their area as a regional local conservation area I would think that the ACA would give that, as it should, very short shrift, unless it can show a demonstrable effect on a particular area. I certainly believe that the ACA in commonsense would always take note first of what was registered under the law of a state and territory. But there may be examples, so, on balance, I will accept the amendment.

The CHAIRMAN—Senator Allison, could you formally move an amendment to this effect: after (iv) you will need the word 'or' and then you will have (v), 'an area that is listed on a regional or local heritage conservation list.' If you formally move that, I can put it and see if the chamber will accept it.

Motion (by **Senator Allison**) proposed:

Subclause (3G), after subparagraph (d)(iv), add:

; or (v) an area that is listed on a regional or local heritage conservation list.

Senator HARRADINE (Tasmania) (10.45 a.m.)—This is an amendment to Senator Schacht's amendment, but we need then to consider whether we are going to support Senator Schacht's amendment as amended. I am happy to vote for this amendment to Senator Schacht's amendment, but I must make it very clear, now that I have studied Senator Schacht's amendment and while it looks okay on paper—I am just making the point that this might be a futile exercise—I do not think that it recognises the realities of states' responsibilities in respect of planning matters in a whole range of land management areas.

I am certainly a very strong supporter of the principle of subsidiarity—that power should reside with the smallest group capable of efficiently performing the functions for which the power is required so that those over whom the power is exercised have greater control and say over those who exercise the power—and I acknowledge what Senator Margetts has said, that at some stage of the game we are going to have to look at the constitutional situation with respect to local governments.

Senator Schacht—We tried in 1988.

Senator HARRADINE—I know—and O'Connor and various other people. But I have studied the government's measure and I see it as being the most effective measure, given the circumstances of the division of powers between federal, state and local government at the present moment. If we vote

for Senator Schacht's amendment we might end up in a situation where, effectively, decisions will have to be made centrally because there will be so many appeals and they will go straight to the federal body. I will certainly vote for the amendment that is put forward by Senator Allison to Senator Schacht's amendment, but I indicate now that I propose to vote against Senator Schacht's amendment.

Amendment (**Senator Allison's**) agreed to.

Question put:

That the amendments (**Senator Schacht's**), as amended, be agreed to.

The committee divided. [10.54 a.m.]

(The Chairman—Senator M.A. Colston)

Ayes	26
Noes	28
Majority	2

AYES

Allison, L.	Bourne, V.
Brown, B.	Childs, B. K.
Collins, J. M. A.	Conroy, S. *
Cooney, B.	Crowley, R. A.
Denman, K. J.	Foreman, D. J.
Forshaw, M. G.	Gibbs, B.
Kernot, C.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K.	Reynolds, M.
Schacht, C. C.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Colston, M. A.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J
Gibson, B. F.	Harradine, B.
Heffernan, W. *	Herron, J.
Kemp, R.	Knowles, S. C.
MacGibbon, D. J.	McGauran, J. J. J.
Minchin, N. H.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Reid, M. E.	Short, J. R.
Tierney, J.	Watson, J. O. W.

PAIRS

Bishop, M.	Macdonald, I.
Carr, K.	Macdonald, S.
Collins, R. L.	Troeth, J.
Cook, P. F. S.	Hill, R. M.
Faulkner, J. P.	Coonan, H.
Hogg, J.	Vanstone, A. E.
Neal, B. J.	Newman, J. M.
Ray, R. F.	Crane, W.
Sherry, N.	Tambling, G. E. J.

*** denotes teller**

(Senator Evans did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Bolkus did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the negative.

The TEMPORARY CHAIRMAN (Senator Crowley)—Order! I call Senator Schacht first so we can ascertain from him whether or not he is proceeding at this point.

Senator SCHACHT (South Australia) (10.57 a.m.)—As I understand it from the running sheet—which I again commend the Senate staff for preparing so well—now that our amendment has been defeated, it is not necessary for me to move opposition amendments Nos 16, 18 and 19 on page 3. Now that the principal position has been lost, those amendments become irrelevant. The same applies to opposition amendments Nos 7 and 16 on sheet 415. So I will not be proceeding with them. It is up to the Democrats to indicate their position.

The TEMPORARY CHAIRMAN—Thank you, Senator Schacht. You have made it clear that you are not proceeding with Nos 16, 18 and 19 on sheet 415 or opposing No. 16. I call Senator Allison to make clear the Democrats' view.

Senator ALLISON (Victoria) (11.00 a.m.)—The Democrats will not proceed with our amendments 58 to 60 and 69 to 86, but we do want to proceed with amendment 87. Therefore, I move:

(87) Schedule 3, clause 35, volume 3, page 492 (line 11), omit ", 3".

The purpose of this amendment is to ensure that installation of facilities is not immune from planning and environment laws. We do not disagree that there may be certain types of installations which could be provided with

such immunities. However, we argue that, if the government wants to provide low impact facilities with immunity, it must provide a definition of 'low impact' beforehand. I urge all parties, including the Independents in the Senate, to focus very clearly on this point.

Voting for this amendment does not mean that no installation can be classified low impact for the purposes of the post-July regime. If the government presents the Senate with a very clear-cut definition of what is meant by low impact facility, I think we can judge it on its merits. Only then can the Senate decide whether such activities should be given immunity from state and territory environment and planning laws.

To implement an immunity without knowing what it is that we are allowing is not sensible, it seems to us. The government may argue that it will put in a disallowable instrument but, as we all know, we have little scope for influencing or amending that regulation.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.02 a.m.)—The Democrat amendment will actually make things such as maintenance and installation—which have always been a matter the Commonwealth has had control over and has allowed to function quite effectively and uncontroversially—both state and Commonwealth responsibilities. In other words, the Democrats have moved from a moment ago supporting Senator Schacht's model, which was essentially all power to the Commonwealth—

Senator Schacht—Commendable too.

Senator ALSTON—I understand the philosophy. I disagree with it, but nonetheless. Having supported that, the Democrats are now saying that even maintenance and installation should go back to the states, but not exclusively. So you end up with an enormous area of potential controversy and complexity. We could not possibly accept this amendment.

Senator SCHACHT (South Australia) (11.03 a.m.)—The opposition will not support the amendment because division 3, which deals with installation of facilities in clause 5 over two pages, is omitted. I accept the minister's view, though he is more a states righter than I am. If you remove this division, I am not sure what would happen.

If you have an argument about the detail of the installation of facilities and how it is done, that is different. I certainly want to maintain—and I just lost a significant issue here on a division—the federal parliament's power in as many areas as possible.

I take this opportunity to put on notice that the Labor Party reserves the right, when back in government, to review the planning processes the minister will put in place on his model which allows the states a direct intervention in the planning process. I suspect there will be many problems with that. If that process does not work—as I suspect it will not in a number of ways—a future Labor government reserves the right to come back to the parliament and review and amend the legislation to take back to the ACA and the appropriate federal authorities a federal planning process that guarantees a national telecommunications infrastructure and system, with the local government's direct right of appeal.

It would be inconsistent of me to vote to take out division 3, the installation of facilities. I have to say that I am more consistent on this than the minister, who has just voted for states rights on the previous amendment and will now vote for centralism on this amendment.

Senator Alston—Always have a mix.

Senator SCHACHT—Inconsistency is a sign of big minded politics.

Senator ALLISON (Victoria) (11.05 a.m.)—Our intent, and maybe our amendment does not adequately do this, was to simply say that we should not be agreeing to low impact facilities without knowing what they are. There may be another way of doing that.

Senator Schacht—It is a disallowable instrument.

The TEMPORARY CHAIRMAN—As the chair, I would be enormously assisted if conversations happened on the record instead of over my head. Besides, they may also be of benefit to other senators. At the moment, Senator Allison has the call. After that, you

can tell us all about it, Senator Schacht. I call Senator Allison.

Senator ALLISON—I guess that is all I wanted to say. Our worry is that, if it is a disallowable instrument, we do not have the capacity to amend it, as we all know. We would be unwilling to sign off on something—

Senator Schacht—It is a disallowable instrument, Senator.

Senator ALLISON—It may be a disallowable instrument, but we cannot amend it, we cannot—

Senator Schacht—But you can chuck it out.

Senator ALLISON—We can chuck it out.

Senator SCHACHT (South Australia) (11.06 a.m.)—I am not going to do the minister's job on this, but I just want to make clear the definition of low impact. Austel/ACA will do the inquiry and it will be a public process. People will put their views forward, from councils to anybody else.

When that is completed, they will say, 'This is our decision on what we believe should and should not be low impact facilities. If they are not low impact, they are automatically appealable when that infrastructure is put in an area.' If it is a disallowable instrument, the parliament has the right to say, 'We disagree with your final outcome,' even after that public process.

I have to say that the opposition thinks that is a reasonable process, though later on I will have some argument about what I think automatically should not be in that inquiry. But in this case, for these general installation facilities, I think the balance is about right.

Senator MARGETTS (Western Australia) (11.07 a.m.)—It is an irony that the argument about states' rights here once again is becoming an argument as to who has the rights to override environmental issues, not who is actually going to look after them. The Greens' approach has been to look at the outcomes of legislation rather than look at it in terms of states' rights, and to look at who is going to look after the environment, not who has the rights to overrule it. Unfortunately, at the moment, leaving the Commonwealth to look after issues means the Commonwealth standing back, as we have seen with the debacle on towers last night, and saying the market will decide. Our approach has been to attempt to support outcomes which will address the concerns of the community. In that sense, we are prepared to support the Democrats' amendment.

Senator LUNDY (Australian Capital Territory) (11.08 a.m.)—I would like to add a few comments to this issue with respect to the administrative burden that the government's proposals are going to impinge upon medium sized and very large business enterprises. With irony, I note that a lot of the rhetoric we have heard from this government in general comment is about minimising imposition of regulation upon businesses. Yet, in this instance, we have a blatant example of the imposition of a very comprehensive and, in my view, unnecessary layer of regulation application that does not go to the merits of the issues being considered but just acquiesces to the particular interest groups—in this case, the state governments—rather than achieving any particular positive outcome for either the community or the carriers that are obliged to abide by these regulations.

Labor's model, as outlined by Chris Schacht, has inherent and necessary flexibility relating specifically to the needs of the local community through the local government. By having the review process going straight to the federal body, you have a mechanism to ensure national uniformity with the application of these regulations in a dispute. To add another layer is unnecessary.

If this issue is addressed in the context of the safety issues being raised about the facilities that come under this regulation, there is a very specific agenda—and has been for a number of years—to create national uniformity with respect to those regulations. A move now back to the states defies this trend in both Australian law and occupational health and safety regulations as much as it defies the government's own rhetoric with respect to removing unnecessary layers of red tape for business.

I would like the minister to note that irony and perhaps find the opportunity to comment. There are more issues at stake than just providing a multilayered appeal mechanism that does serve no real purpose and certainly does not fit into the comprehensive agendas across a wide range, including reducing unnecessary imposition on business and re-empowering the local community in the way that they need and in the way that has been recognised by the majority report and by all the senators involved in making decisions about how these things are going to affect their community.

Amendment negatived.

Senator ALLISON (Victoria) (11.11 a.m.)—by leave—I move:

(88) Schedule 3, clause 5, volume 3, page 469 (line 18), after "network", insert "provided that the building or structure is not, or is not in an area, entered in the Register of the National Estate, or in the Interim List for that Register".

(89) Schedule 3, clause 5, volume 3, page 469 (after line 25), after subclause (1), insert:

(1A) A carrier must not carry out the installation of a facility in an area entered in the Register of the National Estate, or in the Interim List for that Register unless the Carrier has first consulted with the Heritage Chairperson.

(90) Schedule 3, clause 5, volume 3, page 470 (after line 22), at the end of the clause, add:

(8) In this clause:

Heritage Chairperson means the Chairperson of the Australian Heritage Commission under the *Australian Heritage Commission Act 1975*.

These amendments relate to heritage issues and to state and territory immunities. Given that the installation of certain facilities is to be made immune from state and territory laws and the influence of local government, we believe certain safeguards should be put in place. These amendments ensure that subscriber drops for buildings entered in the Register of the National Estate or the interim list cannot be undertaken without prior consultation with the heritage chairperson.

This proposal was recommended by the environment secretary in the Department of the Environment, Sport and Territories in their submission to the telecommunications bills inquiry. DEST are concerned that, with blanket exemptions for subscriber drops, carriers will be able to carry out activities connecting their networks to buildings and structures without being subject to adequate regulation. However, they have pointed out that the act of connection can have a major impact on heritage places, such as disturbance to fragile exterior or structure of historic buildings. DEST noted that a similar problem was overcome in the new telecommunications national code by requiring carriers to consult the heritage chairperson before starting a prescribed activity in registered areas.

The Democrats are disappointed that the government has not seen fit to adopt what seems to us to be a perfectly reasonable request. We are moving this amendment in the hope that the Senate will now see fit to do so.

Senator SCHACHT (South Australia) (11.13 a.m.)—Reading the Democrats amendment, and seeing where it fits in on page 469, I note that the heritage chairperson is defined as:

the Chairperson of the Australian Heritage Commission under the *Australian Heritage Act 1975*—

which is a federal act and within the purview of this parliament. In amendment 89, the Democrats talk about:

. . . an area entered in the Register of the National Estate . . .

As I understand it, the Register of the National Estate comes under national legislation. The national parliament has the power in that area. As this is not going down to the states, unless the minister can discount the description the Democrats have put forward, and this is in the national area dealing with legislation from the federal parliament and it is the heritage chairperson—I suppose Mr Howard would change that to 'chairman'—this is national legislation, it has a national orientation, and the opposition is sympathetic to the amendment, Minister, unless you can show how this would be some sort of calamity for the carriers. I cannot see why they should not consult. If there is an area registered in the Register of the National Estate or the interim

register, that is ours, unless the carrier has first consulted with the heritage chairperson, who is under the Australian Heritage Act, which is a Commonwealth act. In this case, I am more in tune with it as a national outlook.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.15 a.m.)—We certainly do not object to consultation. Indeed, we support the general principle of care in respect of installing subscriber drops in recognised heritage areas. But as I understand the Democrats amendment, it says that this issue will be determined according to state law.

Senator Schacht—Where does it say that?

Senator ALSTON—They are my instructions, but I do not have the precise amendment in front of me.

Senator Schacht—Amendment 88 does not say that.

Senator ALSTON—I do not have a copy of that. I will have a look at it.

Senator SCHACHT (South Australia) (11.16 a.m.)—Minister, 88 says:

Schedule 3, clause 5, volume 3, page 469 (line 18) . . .

Line 18 is at the end of (d)(ii) of the bill, and says:

the installation is carried out for the sole purpose of connecting a building, structure, caravan or mobile home to a line that forms part of a telecommunications network . . .

After 'network' the amendment says to insert:

'provided that the building or structure is not, or is not in an area, entered in the Register of the National Estate, or in the Interim List for that Register'.

Senator Alston—And they have removed that.

Senator SCHACHT—I cannot see what they have removed, unless you can point it out to me.

The TEMPORARY CHAIRMAN—Senator Schacht, perhaps you could just wait one moment.

Senator SCHACHT—I am only trying to be helpful.

The TEMPORARY CHAIRMAN—You are being very helpful, but I am not sure that the minister is in a position to benefit. We will just give him a minute.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.16 a.m.)—I will say what I have been told, and then you can tell me whether it makes sense. Under division 3, there is a series of things that a carrier may do. It says:

(ii) the installation is carried out for the sole purpose of connecting a building, structure, caravan or mobile home to a line that forms part of a telecommunications network . . .

The amendment would be to add to that 'provided it is not in a national heritage area'.

Senator Schacht—On the register—the national register; the Register of the National Estate.

Senator ALSTON—Yes, but that is basically dealing with this issue of whether you should be allowed to have subscriber drops in specified national heritage areas. What it is saying is that you can do these things provided that the building or structure is not, or not in an area, entered in the Register of the National Estate or the interim list for that register; in other words, heritage areas. So you cannot do it in heritage areas full stop.

Senator Schacht—Amendment 90 says that the chairperson can be consulted—amendments 89 and 90—which is the national chairperson; it is not a state chairperson.

Senator ALSTON—Amendments 89 and 90 are separate from 88, and they deal with consultation. But 88 taken alone says that you cannot install subscriber drops if it is in a national heritage area. In other words, you remove the Commonwealth responsibility for that issue, then you could do it under state law.

The bill says that a carrier may carry out the installation of a facility if all of the conditions in the subclauses in division 3(1) are satisfied, and then there is subclause (d)(ii). But this amendment says that you cannot do any of that in a heritage area. That means that Commonwealth responsibility is being removed and you are then back in the state jurisdiction.

Senator ALLISON (Victoria) (11.19 a.m.)—I would be happy with a reworking of the amendment. We do not have the resources that the government has to draft these amendments. If our intent that there be guaranteed consultation is not satisfied by these amendments, then I am happy to have a look at a reworking of them. Our intent is to make sure that the heritage chairperson is consulted necessarily on any such drops which would be into areas that are on the interim list. That is all.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.19 a.m.)—We do not have any objection to the consultation—

Senator Schacht—You say it stands alone and can be read by itself.

Senator ALSTON—Yes, but if you just look at 88 in isolation, it has a very different effect. If there is some confusion about this—I am not saying that it is intentional in any way—and what we say about 88 is something that you did not intend, then I suggest that our advisers discuss this and we move on to something else and come back to it in a moment.

Senator ALLISON (Victoria) (11.20 a.m.)—We would be quite happy to move on to something else and come back to that.

Senator MARGETTS (Western Australia) (11.20 a.m.)—If I am not misunderstanding this matter, in support of Senator Allison's proposal what I certainly would be wanting to see in the bill is not just that there needs to be talk but that consultation be taken seriously. So many times we see 'need for consultation' written in bills. It is a necessity that it be an important part of the process and that nothing can happen until a tick is given that it is okay, that nothing is going to destroy those values in those particular areas. That is important.

It is not just a matter of a person writing a letter saying, 'We are going to do it,' which might be considered consulting. Often that is the way it happens in many departments. With many environmental processes, unfortunately, that is all that is necessary for consultation. It might mean that you send a letter. There might be a letter that comes back saying, 'We'd prefer not to.' But there also might still be the right to overrule that or to not take into consideration that advice.

I plead that the government's wording not just be a token gesture of advising somebody that something is going to go ahead in a heritage area. It should mean that the advice is taken seriously and that there is not the power of a carrier to destroy values within those important areas without that advice being taken seriously.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.22 a.m.)—I do not think there is any difficulty about there being genuine consultation. The problem is that the consultation, if amendment 88 is carried, would take place in the context of the decision then being made at state level.

Senator SCHACHT (South Australia) (11.22 a.m.)—If the minister is making a comment that amendment 88, which is to the end of clause 5(d)(ii), stands alone, he has a point. But the intent of the three amendments which the Democrats have moved is that they want the consultation process under discussion with the chairperson of the Heritage Commission and, if there are complaints about what is going on, that person should be consulted about it. The carriers would be mugs—

Senator Alston—We will agree to 89 and 90.

Senator SCHACHT—So you will put 89 and 90 in. Certainly the opposition strongly supports that.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.23 a.m.)—If Senator Allison wants to move 89 and 90 now, we will support that, but we still need further discussion on 88.

The TEMPORARY CHAIRMAN (Senator Crowley)—Amendments 88, 89 and 90 have been moved together by leave. Do you wish to break now and deal with these?

Senator ALLISON (Victoria) (11.23 a.m.)—I am a little unclear about whether our amendments 89 and 90 can stand alone. Provided they give us the intent we are seeking, we would support that, but I do not

know. I need to talk with the drafters of the amendment to work out how necessary 88 is.

Senator Alston—Perhaps we could postpone further discussion.

The TEMPORARY CHAIRMAN—As I understand it, Democrat amendments 88, 89 and 90 are postponed.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.24 a.m.)—by leave—I move:

(219) Schedule 3, page 463 (line 6), omit "environmental amenity", substitute "the environment".

(241) Schedule 3, page 483 (line 29), omit "environmental amenity", substitute "the environment".

Note: The heading to subclause 25(5) of Schedule 3 (page 485, line 8) is altered by omitting "*environmental amenity*" and substituting "*the environment*".

These amendments simply amend the powers and immunities outlined to replace references to 'degradation of environmental amenity' with 'degradation of the environment'. The criteria on which the ACA is to base a decision is similarly amended. They are in accordance with majority recommendation 414 of the Senate committee.

Senator SCHACHT (South Australia) (11.24 a.m.)—The opposition supports them.

Amendments agreed to.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.24 a.m.)—I move:

(221) Schedule 3, page 469 (lines 19 and 20), omit subparagraph (iii).

This is an amendment to the installation of facilities provision which exempts the installation of certain facilities from state or territory environmental planning laws, to provide for the installation of subscriber drops by 1 July that cross over or under a street or road that connects subscribers to networks in existence as at 30 June 1997. What this means is that in the current model it is permitted to have the subscriber drop from the pole outside the home to the home above ground until, I think, 1 July 2000, and this would apply the same regime to across the street subscriber drops.

Senator Schacht—Is there a hand grenade in this?

Senator ALSTON—No. For those who would like to have all subscriber drops underground immediately, it is not their preferred position, but the reality is that if you—

Senator Schacht—This is connections to the Optus cable?

Senator ALSTON—Yes. If you allow subscriber drops from the pole to the home to stay above ground, but the others have to go underground, then the carriers—particularly Optus—will say, 'On your side of the street where our cable runs it is not a problem; you get it straight away'. But, on the other side of the street, if they have to go underground, they estimate it would cost them in the order of $230 million. Therefore, they would wait to connect people on the other side of the street until they had a sufficient number to warrant going underground. Effectively that would be discrimination against people on the wrong side of the street. If you have a balance in it which allows both the across the street and to the home to be above ground until 2000, then you are treating all residents and potential consumers of these services equally.

Senator ALLISON (Victoria) (11.28 a.m.)—The Australian Democrats will oppose this amendment. Even though we still do not know what the definition of low impact is, this amendment is virtually guaranteed to ensure that it is weaker than it could be. As it stands, the bill says that connections which cross over or under a street or road will not qualify as low impact; in other words, such connections will not be immune from state and territory laws.

This amendment makes it possible that such connections can be included in the definition of low impact. As I have already said, even though we do not know what the definition will be, it is pretty obvious that the government intends such connections to be tagged as low impact—otherwise, why would the government be bothering with this amendment? Obviously the carriers have indicated to the government that this is what they require, and the government has listened.

So we flatly oppose this amendment. I will be interested to see whether the Senate blocks this amendment and whether the definition of low impact will contain connections over or under roads. But I do not expect any surprises on this one.

Senator SCHACHT (South Australia) (11.28 a.m.)—The opposition opposes this amendment. Eighteen months ago we made a statement that after 1 July you will not put overhead broad-band cables for the Optus network or the Telstra network unless you get local government approval. I have always taken that to mean the connection going in as well. Minister, you might argue that on the right side of the street going over or across your own property you make that decision, but here you are arguing that the cable to the subscriber on the wrong side of the street—we will all start singing *My Fair Lady* in a moment—

Senator Alston—*On the street where you live*.

Senator SCHACHT—*On the street where you live*—that is right. You are more up to date on these matters than I am, Minister. You will have a proliferation of cables crossing the street in one form or another. Last week, driving through Ivanhoe, I saw batches where clearly a group of consumers had got together. The cable had been strung by Optus. I always now drive around mentally counting connections to see how they are going. Someone else was driving, thank goodness. But I noticed that a number of houses in an area obviously had all decided to get the AFL football together, so the proliferation of cables cutting across the street and so on was quite heavy.

I do not think that is in the spirit of what we always thought, and to give it an exemption to 2000 is—

Senator Alston interjecting—

Senator SCHACHT—Yes, but you are now crossing a public road.

Senator Alston—So it will be okay on your side.

Senator SCHACHT—Yes. Minister, you know my view about it: we should get it underground as soon as possible. But once you start laying this across the other side of the street, there is a further cost going to occur. Ultimately, they will say that it is too difficult, when we have that study of the panel, and so on. Therefore, because it is crossing a public street, that is not in the spirit of the decision 18 months ago, by the then Minister Lee, that after 1 July councils will have the right to say no.

Under this position, if the carrier can convince the council and local communities—the subscribers, who are ratepayers—that they want it done this way, so be it. That is quite clear. In many cases subscribers will convince the council, saying, 'As a ratepayer, I want it coming across the street, and I want you to agree to it.' That is a useful position to have. It is an appeal process in accordance with the general themes that we have been pushing. It does not automatically say no, but it does mean the carrier will have to consult not only with the subscriber. If the subscriber wants it, let the subscriber convince the council to have it crossing the street, if they think it is to their benefit. That is a reasonable process to have.

Senator MARGETTS (Western Australia) (11.32 a.m.)—I wish to indicate that the Greens (WA) will be opposing the government's amendment.

Question put:

That the amendment (**Senator Alston's**) be agreed to.

The committee divided. [11.37 a.m.]

(The Chairman—Senator M.A. Colston)

Ayes	29
Noes	27
Majority	2

AYES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Colston, M. A.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J
Gibson, B. F.	Harradine, B.
Heffernan, W.	Herron, J.
Hill, R. M.	Kemp, R.
Knowles, S. C.	MacGibbon, D. J.
McGauran, J. J. J.	Minchin, N. H.

AYES

O'Chee, W. G. *	Parer, W. R.
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Tierney, J.
Watson, J. O. W.	

NOES

Allison, L.	Bourne, V.
Brown, B.	Childs, B. K.
Collins, J. M. A.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crowley, R. A.	Denman, K. J.
Foreman, D. J. *	Forshaw, M. G.
Gibbs, B.	Kernot, C.
Lees, M. H.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	O'Brien, K. W. K.
Reynolds, M.	Schacht, C. C.
Stott Despoja, N.	West, S. M.
Woodley, J.	

PAIRS

Coonan, H.	Evans, C. V.
Crane, W.	Bolkus, N.
Macdonald, I.	Neal, B. J.
Macdonald, S.	Sherry, N.
Newman, J. M.	Ray, R. F.
Tambling, G. E. J.	Collins, R. L.
Troeth, J.	Faulkner, J. P.
Vanstone, A. E.	Bishop, M.

*** denotes teller**

(Senator Carr did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Hogg did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the affirmative.

Senator ALLISON (Victoria) (11.40 a.m.)—I would like to request that, rather than moving on to government amendment No. 222, opposition amendment No. 1 from sheet 418 or Democrat amendment No. 57 be considered at this time. These amendments are more far reaching than government amendment No. 222. If these are not successful, then we will support the government amendment. Otherwise, we would want to oppose it.

The TEMPORARY CHAIRMAN (**Senator Watson**)—Senator, if you do not mind, the committee will consider Senator Schacht's amendment on behalf of the opposition first.

Senator SCHACHT (South Australia) (11.41 a.m.)—I move:

(1) Schedule 3, page 470 (after line 16), after subclause (4), insert:

(4A) A designated overhead line must not be specified in an instrument under subclause (3).

(4B) A telecommunications transmission tower (as defined by clause 28 of Schedule 1) must not be specified in an instrument under subclause (3).

The intent of my amendment is that an overhead line cannot be declared a low impact facility. Proposed subclause (4A) states that 'a designated overhead line must not be specified in an instrument under subclause (3)'. Proposed subclause (4B) states that 'a telecommunications transmission tower, as defined by clause by 28 of schedule 1, must not be specified in an instrument under subclause (3)'. What this is clearly doing is making sure that overhead cables, which we have already debated, cannot be declared a low impact facility.

The minister has made it clear that once we get through the transition period low cables can be appealed by local government—they cannot go up without approval of local government. The present review undertaken by Austel, now ACA, is looking at whether telecommunications towers could be considered a low impact facility and, therefore, have the immunity of the federal legislation and be outside planning appeal provisions, which the minister has already put in place, meaning there will be no appeal provisions. If it is considered a low impact facility, you cannot appeal against it.

We in opposition believe that a telecommunications tower by itself is a major facility and should now be declared by the parliament to be a non-low impact facility and be able to be appealed against and be involved in the planning process that this legislation puts in place. This would mean that if carriers and councils do not get agreement over the siting and construction of a tower in the local area under the minister's amendment, which has now been carried, they can then appeal through various designated state planning

tribunals and processes or, ultimately, take it to the ACA.

I believe that the issue of the towers is such in the community that the government and this parliament should not take the risk of having Austel declare them a low impact facility. If that happens, there will be outrage in the community, not just from councils but also from the general community who are concerned about the issue of visual pollution, the visual environment, and the geographic and natural environment in respect of where towers are placed as well as the ongoing discussion and debate, which is not conclusive by any means, about the health risks, if any, from electromagnetic radiation from these mobile telephone towers and other microwave towers.

I believe it would be very wrong of this parliament to allow that decision to be made by Austel/ACA. We should declare it right now. This is an appealable planning process where communities have the right to say no and if they disagree with a carrier and the carrier wants to take it to the ACA or through the appeal provision so be it.

I also want to indicate that government amendment No. 222, which the minister has circulated, goes three-quarters of the way to agreeing with the opposition's amendment about towers now being declared non-low impact facilities. The minister's amendment which has now been circulated is different from the one in the major set of government amendments. The time down the bottom is 4.50 p.m. on 20 March. It states:

> (a) the height of the extension does not exceed 5 metres; and
>
> (b) there have been no previous extensions to the tower.

For this purpose, the extension of the tower is to be considered by the review of whether it is a low impact facility.

The opposition does not accept that. We welcome the fact that the government has reached 85 per cent agreement on towers generally being outside the review of Austel and being non-low impact but we believe adding another five metres—or for those of us who grew up with another system of measurement about 15 feet—on top would be seen in a lot of local communities as a major change not a low impact change.

I know one reason the minister will give for this being done is that it will encourage co-location on an existing tower. We had the evidence before of some 700 or 800 towers that are up around Australia. Telstra has only agreed to co-locate eight so far.

Senator Alston—I think they said seven.

Senator SCHACHT—It is either seven or eight. The days wear on with this debate. Clearly, the demonstrable issue should be that, by and large, if they can co-locate on the same tower—and when they take the analog transmitters off a number of these towers the GSM will go on; that is fine because the tower will stay the same—they should. I think a lot of people will argue that if you are going to increase the height of the tower by five metres or increase the transmission power because further carriers are using it, they will want to have a say about that.

I also point out that under the planning provisions if a carrier said, 'The council will not add 15 feet on the top. Therefore we are going to have to build a new tower somewhere in the same suburb to make sure we meet the demands of the subscribers who want mobile services,' I think the ACA would have to say, 'We think, on balance, that it is better to have one tower that is an extra 15 feet higher than two separate towers.' That is a matter of judgment in the appeal process or in the planning arrangement at the state level or in particular for the ACA.

It is going to be an appealable process even with the extra 15 feet. I think if you just say that this is a low impact facility and the 15 feet or five metres can be added without an appeal provision is asking for a considerable amount of community disquiet and agitation. I acknowledge that the government has come a long way to meet the opposition's view. We are now arguing about the 15 feet or five metres, but I still believe that should be excluded from being a low impact facility.

Senator ALLISON (Victoria) (11.49 a.m.)—The opposition's amendment is almost identical to the Democrats' amendment No. 62 but there are a couple of differences.

Firstly, it ensures that a designated overhead line will not be included in the definition of low impact facility. This is something that the Democrats amendment does not do. We did not draft this into our amendment because frankly we did not think the government was capable of issuing a definition of low impact which included designated overhead lines. We think our confidence in this is borne out by the fact that government amendment No. 222 guarantees that designated overhead lines will not form part of the definition. If that was not the government's intention presumably they would not have ruled it out. Nonetheless, I think that is a worthwhile point.

Secondly, the ALP amendment rules out all towers from the definition of low impact as does our amendment. Clearly, this is much stronger than what the government is proposing. It is only prepared to rule out towers when they are up to five metres tall and attached to buildings.

Our amendment differs from the opposition's because it rules telecommunications transmission devices out altogether. I do not know that that is the appropriate phrase to use, but our intention is that antennas are also ruled out of the definition of low impact. The reason for that is that the visual aspect of towers is one point but the transmitters are the problem in terms of health and safety. We do not think you can just separate them and say, 'Antennas are okay but towers are not.' They are part of the same item. I note in the government's most recently circulated amendment that it is made clear. The amendment states:

(2) To avoid doubt, a reference in this clause to a **tower** does not include reference to an antenna.

(3) In this clause:

tower means a tower, pole or mast.

Our concern is that low impact should not just be low visual impact. Low impact should also relate to health and safety, and I am sure we could have a three-day debate on health and safety, which I do not propose to go into here. That is the reason for our amendment.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.52 a.m.)—This is not a debate about whether or not you should allow facilities with an additional five metres attached to a tower or on the side of a building to be permitted. This is simply an argument about whether or not you ought to allow a public inquiry process conducted by Austel to make a recommendation to the minister for the minister to make a regulation as to what is a low impact facility, and, of course, that is a disallowable instrument. That is the path down which we would suggest the parliament goes. The alternative approach that Senator Allison would take is to rule all these things out absolutely—in other words, preempt the Austel inquiry. On my advice, if you were to rule out everything, as Senator Allison would want to do, then Telstra would not even be able to have hand mounted mobile phones in their vehicles, let alone people being allowed to have antennas on the side of their houses.

In other words, there would be no low impact facilities. That is really what she is trying to achieve. That is quite contrary to the approach that we have taken. All that we are suggesting is that there should be a public inquiry to determine what should be a low impact facility, and you should rule out, now, towers above five metres. It is quite clear that those will not be low impact facilities. But what we say is that it should be left to Austel to have a public inquiry to provide advice to the government as to whether an additional five metres does constitute a low impact facility, whether co-location constitutes low impact facility and whether antennas on the sides of buildings constitute low impact facilities. You will get a chance to disallow that anyway in due course.

There is a process that you can go through, which I would have thought is very democratic. What you are wanting to do is close off all that and say that none of these things should be regarded as low impact. As I say, there will be some very onerous consequences as a result of that approach.

Senator SCHACHT (South Australia) (11.54 a.m.)—In your amendment, an extension to an existing tower by a further five metres and/or a new tower up to five metres would go off to Austel to be examined as to whether it was low impact or not.

Senator Alston—Yes. In practice there won't be too many of those.

Senator SCHACHT—I know that there won't be in practice.

Senator Alston—But attached to a building—

Senator SCHACHT—Yes, attached to a building. So if you put up to five metres on top of a 10-storey building, that will be considered by Austel as to whether it is low impact or not.

Senator ALLISON (Victoria) (11.55 a.m.)—We need to put on the record here that the Democrats are not talking about ruling out anything. We are simply saying that it should not be exempted from going through the normal processes. The minister likes to get up and say, 'Yes, the Democrats would want to demolish telecommunications as we know them.' The normal lines come out. We are talking here about exempting certain installations from planning processes post, I think in this case, December this year. So it is reasonable for us to be concerned about what is to be designated low impact, because low impact means exemption from this. The dire consequences that the minister keeps telling us will arise from these amendments are simply not reasonable, not true. The minister should desist from making those kinds of remarks.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (11.56 a.m.)—The reality is this: 'low impact facilities' is a concept designed to pick up those facilities that would generally be regarded by the community as not matters of significant concern. We acknowledge that towers above five metres are, so they would not be regarded as low impact facilities. They therefore have to go through what you would call the normal planning processes. What we want to do is retain the ability of Austel to conduct a public inquiry to determine whether low impact facilities—in other words below five metres—

Senator Allison—It's exempting them from going through the process.

Senator ALSTON—to examine whether they should be treated as low impact facilities.

Senator Allison—That's right.

Senator ALSTON—What do you mean, 'That's right'? That is what we propose: they ought to be capable of being regarded as low impact facilities. That is what you are opposed to. You want to have them treated as not low impact facilities, so, in other words, there would need to be an examination at state and territory level, according to planning laws, and if necessary an appeal to the ACA, in relation to what we would suspect are generally non-controversial items—low impact facilities. You want to rule that out and say that these matters should simply be required as a matter of course to be dealt with as non-low impact facilities, in other words taken through the normal planning regime. That is a very good way of clogging up the system with a lot of things that may—

Senator Allison—Oh!

Senator ALSTON—Well, it is. You are saying that they have to go through all the planning hoops. We are saying, 'Why can't you let Austel, in the first instance, conduct a public inquiry to see whether that is a general view, to see whether antennas on the side of buildings or an additional five metres on towers or buildings are indeed capable of being regarded as low impact facilities?' You are not prepared to allow that. You just say up front, 'It is not a low impact facility; it therefore ought to go through all the state and territory planning laws.' You may find the great bulk of applications to state and territory planning laws would be in respect of what everyone else might regard as low impact facilities. But you have already pre-empted that. You have said, 'No, these all have to go there.' I presume that means enormous fees for lawyers and town planners and the rest, even though—

Senator Allison—Oh!

Senator ALSTON—That is the consequence of it. You want them to go through the normal planning process even though Austel might find that these are entirely non-controversial and should be regarded—

Senator Allison—Well—

Senator ALSTON—It is not me expressing the view that they are. We are not saying they are. That is the vital distinction that ought to

be understood. We are not prejudging it. We are not saying that these are low impact. We are saying that it ought to be up to Austel to conduct a public inquiry. You are predetermining it; you are saying 'They are not. We want to legislate to ensure that they go in and clog up the state and territory planning rules. Every facility that is an antenna or an addition to a building has to go through all these hoops.' We just say that you ought to be a bit democratic and let Austel have a look at it first.

The TEMPORARY CHAIRMAN (Senator Watson)—Senator Allison, before I call you again I will just remind you that because your cross-exchanges with Senator Alston are not being put through the chair I doubt if they are being picked up in the ABC radio broadcast. You might like to bear that in mind.

Senator ALLISON (Victoria) (Midday)—The minister says that we are trying to determine something which is unreasonable, but can I ask why the government has chosen five metres and not six, four or three metres?

Senator Alston—Let Austel decide.

Senator ALLISON—I suggest to you, Minister, that you have decided. You are the one who has written this legislation. If you have had consultation with Austel, that is fair and reasonable. I would suggest to you that not a lot of work has been done by Austel or by the government to find out whether people are happy with a tower being extended by five metres. Five metres is a very large amount to be extending a tower. There would be, I would think, quite serious aesthetic concerns about that in some areas.

I do not think you can necessarily say that an extension of five metres would not arouse any opposition or any concern or would be low impact. It might be your definition of low impact but, I suggest to you, it would be better to allow these extensions to go through the planning process, as we have previously said.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.01 p.m.)—The answer is that five metres is generally a sufficient height to allow a second carrier to build onto an existing tower.

Senator Allison—Yes, Minister, I am sure that five metres is what suits the carriers, and I am sure that will allow most of them to be erected as required.

Senator ALSTON—I thought you were suggesting that this was simply an arbitrary figure we plucked out of the air and were asking why we chose five metres. I am explaining to you the reason: it enables a second carrier to co-locate on a tower, which I would have thought you would be supportive of. In most instances, everyone has been trying to encourage co-location. You cannot co-locate unless you add to an existing tower to the tune of about five metres. So you cannot have it both ways. You cannot say, 'We want co-location on the one hand, but we won't allow you to add to it on the other.' Five metres is a sufficient margin to enable that co-location to occur.

We are not saying it ought to occur in every instance. We are simply saying it ought to be left to Austel to conduct a public inquiry, to make the judgment and to make a recommendation to the minister which results in a disallowable instrument. So it is not as though this parliament is somehow being asked today to decide that up to five metres is a low impact facility, but you are asking the parliament to decide today that it is not.

Senator MARGETTS (Western Australia) (12.02 p.m.)—I would like some clarification in relation to Austel. Would it in fact still be Austel conducting the public inquiry or would these functions be passed on to other bodies? What are the guidelines?

We now, of course, are seeing the review of state and federal legislation in relation to what is considered to be anti-competitive behaviour. When you consider that child-care facilities are being challenged in relation to whether or not the community can object to their being put next to chemical waste dumps as it is considered anti-competitive behaviour, I just wonder whether or not we are going to come crunching into the whole issue of anti-competitive behaviour. In fact, Austel, or whichever body will be conducting such inquiries, may in reality be hamstrung by competition policy when such issues are dealt with.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.03 p.m.)—The fact is that I gave a direction to Austel on 23 December 1996 to conduct that public inquiry. My information is that it has been proceeding since that time. To the extent that it has not come to your attention, I suppose that suggests that it has not been a matter of high controversy. This amendment would basically cut dead that inquiry and not allow it to provide those recommendations. You would simply say that you have decided in advance for it.

Senator MARGETTS (Western Australia) (12.04 p.m.)—No, I am saying that there are towers and towers. If I am not misreading Senator Allison, it is what is on the towers that is often more important than the size of the tower, the high tension power poles. People in the community are not moaning about the height of the towers so much as the implication of what is on the towers.

We are saying that the health and environmental implications of what is carried on the tower antennas are just as important as the height and the visual amenity. If you have a ruling now which largely deals with the general category, that may in the future fail to deal with health and environmental consequences of what is carried on antennas and whatever the technology in the future might be in terms of human health and environmental consequences.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.05 p.m.)—The fact is that Austel will have the ability to take all those matters into account and it may well come back and say, 'There are some additions to towers of less than five metres that are acceptable and others that aren't,' and they will make a recommendation accordingly. If you want to put in a submission to that inquiry, you should do so. That allows the necessary flexibility. That is why you have a public inquiry and that is why we wanted it referred to them rather than our making the judgment.

I keep saying that that is the proper democratic process. You are wanting to cut all that short and say that, irrespective of whether or not there might be some, as you concede, that are not a problem, they all have to go through the state and territory planning processes. In other words, they have to clog up the system even though they might be uncontroversial; otherwise you would have to argue that anything is potentially controversial, or is in fact controversial, and all of it should go to state and territory planning. I thought that was Senator Allison's position, but you seem to concede that some may be acceptable and some may not. Why would the acceptable ones have to go through state and territory planning if everyone agrees that they ought to be treated as low impact facilities?

Senator MARGETTS (Western Australia) (12.06 p.m.)—Perhaps the minister might like to let us know what the terms of reference of that inquiry are.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.06 p.m.)—The direction is a public document, but I can make sure that you are provided with a copy of it.

Question put:

That the amendment (**Senator Schacht's**) be agreed to.

The committee divided. [12.13 p.m.]

(The Chairman—Senator M.A. Colston)

Ayes	27
Noes	29
Majority	2

AYES

Allison, L.	Bourne, V.
Brown, B.	Childs, B. K.
Collins, J. M. A.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crowley, R. A.	Denman, K. J.
Foreman, D. J. *	Forshaw, M. G.
Gibbs, B.	Kernot, C.
Lees, M. H.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	O'Brien, K. W. K.
Reynolds, M.	Schacht, C. C.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.

NOES

Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Colston, M. A.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J
Gibson, B. F.	Harradine, B.
Heffernan, W.	Herron, J.
Hill, R. M.	Kemp, R.
Knowles, S. C.	MacGibbon, D. J.
McGauran, J. J. J.	Minchin, N. H.
O'Chee, W. G. *	Parer, W. R.
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Tierney, J.
Watson, J. O. W.	

PAIRS

Bishop, M.	Vanstone, A. E.
Bolkus, N.	Crane, W.
Collins, R. L.	Tambling, G. E. J.
Evans, C. V.	Coonan, H.
Faulkner, J. P.	Troeth, J.
Neal, B. J.	Macdonald, I.
Ray, R. F.	Newman, J. M.
Sherry, N.	Macdonald, S.

*** denotes teller**

Question so resolved in the negative.

Senator ALLISON (Victoria) (12.16 p.m.)—I propose that we deal with Democrat amendment 62 separately from 57 and 61. Given that opposition amendment No. 1 was defeated, we will not proceed with our amendments 57 and 61. I move:

(62) Schedule 3, clause 5, volume 3, page 470 (after line 14), after subclause (3), insert:

(3A) A telecommunications transmission device must not be specified in an instrument under subclause (3).

This amendment ensures that mobile phone transmission installations would, under no circumstances, be classified as low impact. It is our view that, if we have a low impact category, that definition should not allow transmission towers or devices to be included. This amendment will ensure that the minister can only determine that a facility is low impact if he or she is satisfied that it will not have an adverse impact on public health or visual amenity of the person in the immediate area.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.17 p.m.)—I think we have had this debate.

Senator MARGETTS (Western Australia) (12.17 p.m.)—I am indicating that I am supporting the Democrats' amendment No. 62.

Senator SCHACHT (South Australia) (12.17 p.m.)—The opposition does not support the amendment. Firstly, the definition is so wide that I am not sure where it would fall. Secondly, people can raise the issue of what is low impact at the Austel/ACA hearing and they will rule accordingly if it is a disallowable instrument.

Amendment negatived.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.18 p.m.)—by leave—I wish to move government amendment 222 together with amendments 1 to 4 on sheet B97 and BA427. I move:

(222) Schedule 3, page 470 (after line 14), after subclause (3), insert:

(3A) A designated overhead line must not be specified in an instrument under subclause (3).

(3B) A tower must not be specified in an instrument under subclause (3) unless:

(a) the tower is attached to a building; and

(b) the height of the tower does not exceed 5 metres.

(3C) To avoid doubt, a reference in subclause (3B) to a ***tower*** does not include a reference to an antenna.

(1) Schedule 3, page 467 (after line 13), after clause 3, insert:

3A Extension to a tower to be treated as the installation of a facility

(1) For the purposes of the application of this Part to the installation of facilities, if:

(a) a tower is a facility; and

(b) the tower is, or is to be, extended;

then:

(c) the carrying out of the extension is to be treated as the carrying out of the installation of the facility; and

(d) the extension is to be treated as a facility in its own right.

(2) To avoid doubt, a reference in this clause to a ***tower*** does not include a reference to an antenna.

(3) In this clause:

tower means a tower, pole or mast.

(2) Schedule 3, page 470 (before line 15), before subclause (4), insert:

(3D) An extension to a tower must not be specified in an instrument under subclause (3) unless:

(a) the height of the extension does not exceed 5 metres; and

(b) there have been no previous extensions to the tower.

For this purpose, ***tower*** has the same meaning as in clause 3A.

(3) Schedule 3, page 471 (after line 23), after subclause (3), insert:

(3A) A reference in this clause to the ***maintenance*** of a facility does not include a reference to the extension of a tower. For this purpose, ***tower*** has the same meaning as in clause 3A.

(4) Schedule 3, page 472 (line 18), after "clause", insert "(other than subclause (3A))".

We have essentially had the debate on these amendments. The additional sheet simply adds the co-location to the five metres.

Senator SCHACHT (South Australia) (12.20 p.m.)—We have had the debate and we lost our amendment. This is not as good as ours but we will not oppose it. I would say to the minister that, in view of the comments made by opposition parties, both formally and informally, you had better make sure that the Austel/ACA review of what is a low impact facility is done in a very open and transparent way; otherwise you will have some things wrapped around your head at the end of the day. That will just be a different debate. I just make that as a comment. I am sure they will recognise that this has to be a very open, seamless and transparent public consultation.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.21 p.m.)—I will write to all the relevant parties and indicate progress.

Senator HARRADINE (Tasmania) (12.21 p.m.)—This is, of course, a matter that I have taken up with the minister. I hope that he will include me in the relevant parties in respect of that. As has been indicated, it would be vital to make that inquiry open and transparent, and for a clear focus to be made of its activities so that we then can be presented with what would be, as Senator Schacht has mentioned, a disallowable instrument.

Senator SCHACHT (South Australia) (12.22 p.m.)—Minister, I appreciate your writing to us but I am more interested in your making sure that Austel/ACA does everything possible, both formally and informally, to write to the Local Government Association and other bodies that have put forward views, such as health groups, for example—even if they are not in the mainstream or are not major players in the debate. I think you will get a better process and there will be less criticism of Austel/ACA at the end of the day when the disallowable instrument comes back. I suspect it will be debated anyway.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.23 p.m.)—I assume that is all happening, but I will make sure it is. There have been public advertisements placed. I cannot believe that the relevant local government authorities have not already been in touch with Austel but, again, I will include that in the report that I make to all relevant parties—including independent senators—so that we all know where it is going.

As a result of discussions between the government and the Democrats, I am in a position to indicate that the Democrats will not proceed with their amendment No. 88 on the basis that the government undertakes that in the ministerial code of conduct we will provide that the connection of subscribers to networks in place as at 30 June 1997 will be subject to heritage considerations. I give that undertaking. They will not proceed with the amendments Nos 89 and 90 on the basis that heritage matters are dealt with elsewhere in the bill. They are in clause 26(4).

Amendments agreed to.

Senator ALLISON (Victoria) (12.25 p.m.)—I seek leave to withdraw Democrat amendments Nos 88 to 90.

Leave granted.

Amendments withdrawn.

Senator ALLISON (Victoria) (12.26 p.m.)—I move:

(63) Schedule 3, clause 5, volume 3, page 470 (after line 22), at the end of the clause, add:

(7) A carrier must not construct a mobile phone base station within 300 metres

> of a child care centre, kindergarten, school or hospital.

This amendment would not permit mobile phone towers to be constructed within 300 metres of schools, child-care centres, kindergartens or hospitals. This is a measure of prudent avoidance. I do not propose to speak at length on this matter. It is an amendment which we put forward in the last telecommunications debate. It is one we will continue to put up because we feel very strongly that it is important that children in particular are protected from the health effects that research is showing are more and more likely to be of concern. As I said, I do not wish to debate this for any length of time, but I put it to the Senate that this is an appropriate step to take to protect public health and safety.

Senator SCHACHT (South Australia) (12.27 p.m.)—Senator Allison is correct in that this was discussed in the Telstra privatisation debate last year. We supported an amendment then for, I think, 250 metres. Even Senator Harradine showed some interest in a figure like that. Since then, I have indicated that the opposition will not support this amendment at this time for two reasons.

Firstly, even with the government's amendment, you cannot construct a new tower without the local community having an appeal process. If they disagree with the siting of the tower close to a school or anywhere else, they can now appeal through the provisions that we have just carried today, even though they were not as perfect as I would like.

For the first time, a council can say no to the construction of such a tower. The carrier, if it cannot reach that agreement, can then appeal through the state planning processes and, ultimately, to the ACA. There is a quantum difference between what we were faced with in the Telstra dissolution bill and what we have now—that is, there is now an appeal process for local communities and that is an immeasurable improvement.

Secondly, the minister has indicated that there is a major review. I think the amendment is still to come on some of the health and safety aspects of the electromagnetic radiation. I saw that amendment privately this morning. It was something I raised earlier in the debate. I think that the research program also ameliorates that, compared with what we were faced with last year.

Finally, I have to say that until that research program is completed, it would be a bit odd to say outright, 'No more towers anywhere within the 300 metres limit.' I noticed the other day on Flemington Road that there is a mobile tower facility on the top of the children's hospital. I am not sure what they got out of having it there, whether it was a bagful of money or whatever.

Senator Alston—It might have been nothing.

Senator SCHACHT—It might have been nothing. But they are around and I think that this program and the amendment yet to come are a reasonable approach to take. I also want to say that no new tower—a full tower—can be built now under the government's own amendment, unless it gets approval of the local community, and if they disagree there will be an appeal process. It is a reasonable position until we get the report of this $4 million research program.

Just for the record, I believe the case is still open. From the evidence that I have seen, whilst the safe levels of electromagnetic radiation are still in dispute and there may be some risk, I note that Australians seem to want mobile phones in ever increasing numbers. There has to be a balance. Consumers want mobile phones running into millions, which means there will have be towers somewhere. The community is going to have to decide on the balance between the risk, if there is a risk, and the convenience of mobile phones. There is no black or white outcome on this. It is a matter of balancing the risk with the convenience. Where we are at the moment is probably reasonable.

Senator MARGETTS (Western Australia) (12.31 p.m.)—I think what we are dealing with here is the precautionary principle running up against competition policy and the precautionary principle says that you do not take risks. I think it is reasonable to assume that you provide some certainty. You always talk about certainty, but you do not talk about certainty to the community as certainty in terms of health outcomes.

I notice Senator Schacht carefully chose his words in terms of 'full towers' and, of course, the appeal process will not be available for what are considered to be low impact towers, whatever they are. I think it is important. Perhaps the minister can tell us what costs would be involved with parents and citizens associations or other community groups being involved in an appeal process. We are dealing with the littlies against the biggies—against the corporate weight. If there is no cost involved, perhaps the minister might tell us. But what are the likely costs involved in an appeal process if a carrier wishes to site a tower near a school and wishes to challenge the community's appeal?

Senator ALLISON (Victoria) (12.32 p.m.)—I want to make a couple of points. The transitional period, about which we will be required to vote, means that towers will continue to be erected until December this year. So I would imagine that most of those not erected yet will be erected by then, which is why we need to take this action now.

Senator Schacht says he is happy to go along with the idea that it is unclear what the health risks associated with electromagnetic radiation are and to proceed apace without that knowledge. He refers to the 4½-year period over which our research funding will stretch and says that at its end we should review the situation. We might not know in 4½ years. There is nothing magic about $4½ million being spent on research and public information and so on. Who knows if we will know conclusively in 10 years time? If you look at the tobacco industry, it has taken much longer than that. At the end of this $4½ million we will not conclusively know one way or the other.

What we do know is that there is an increasing body of evidence which suggests that human cells are affected by electromagnetic radiation. We know that there are changes to cell structures. We know that electromagnetic radiation can cause breaks in DNA structure, but there will be hundreds or thousands of research projects under way right around the world. They will discover changes to human biology but they will not necessarily prove the case one way or the other. It is not a black and white situation.

The Democrats think it is very important that we identify those people who are most likely to be vulnerable to these health effects and that we try to do something about it now and not leave it for another four years when, certainly, all of the mobile phone towers that are needed will have been erected and antennae will be everywhere. I think it is not good enough to use the excuse that we are doing something; that we have thrown a bucket of money at a bit of research yet to be defined and that is all we need to bother about; that we can satisfy all those who are worried by simply saying, 'Until there is proof we do not feel obliged to take any action.'

This would, I suggest, hardly cause any inconvenience even to the telecommunications industry. It is simply asking them to organise their network of towers so that they are not erected close to these facilities. We know that schools, child-care centres and kindergartens are where young people are on a regular basis—often a daily basis—and that they will have chronic exposure to electromagnetic radiation. We also know that the research is showing that low levels of radiation—that is, not the thermal effects but low levels; Senator Schacht might learn something if he listens—in fact, may be just as deleterious as the thermal effects of radiation. That is where we are unclear.

Austel and the industry itself are arguing that we are well within standards; that if you take measures around mobile phone towers, particularly directly under them, you will not find exposures which exceed the current standards. We all know that the industry, in effect, sets those standards and that they are not based on the research work that has been done on low levels of electromagnetic radiation. So we make no apologies for the fact that there is no specific research which says that what we are suggesting is justified. However, we think it is prudent, it is wise, it is sensible, and not too onerous on telecommunications companies, to have them think about this and to not site these towers in close proximity to those centres.

Senator MARGETTS (Western Australia) (12.37 p.m.)—I was wondering if the minister was able to provide an answer to my question about what costs might be involved with parents and citizens associations getting into the appeal process and fighting it if it was challenged by the carriers.

Senator Alston—Sorry, I do not understand that. Parents and citizens associations being involved in what?

Senator MARGETTS—Let me speak slowly. We are talking about schools and we are talking about the ability of the local community to appeal against a decision for the siting of towers near schools. I just wondered whether the minister could give any indication of what the likely costs would be of a parents and citizens association making an appeal if a carrier challenged that.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.38 p.m.)—No, I do not think you can give any sensible indication of legal costs. I can tell you from my own not inconsiderable experience that legal costs can blow out quite unpredictably, depending upon the complexity of the issue and the extent to which the parties decide to call expert evidence. What might seem a simple point can suddenly become a matter of very substantial legal argument and you end up canvassing not just the facts but the law. So I do not really think it is possible to give that sort of indication.

I will just say a few very quick words. For the interest of senators, particularly those at the far end of the chamber, we have at random selected two pages of the street directories in suburban Melbourne and Sydney to give an indication of what this would mean in terms of the areas left in those parts. You will see that in Sydney the great bulk of that part of Dulwich Hill, Earlwood, Canterbury and Summer Hill would simply not be able to sustain any mobile phones. In Melbourne it is pretty much the same story. So I think you can assume that would be the case around Australia.

Senator Schacht—Who's got the colouring-in set in the department?

Senator ALSTON—I have not had time to do that, but I am sure someone got a lot of enjoyment out of it. The only other point I would make—and I think it was made very well by Professor Simon Chapman in a recent article in the *Sydney Morning Herald*—is that there is a very significant logical inconsistency in saying, 'There may be some health effects, and therefore we need to quarantine schools, child-care centres, nursing homes, hospitals and the like.' If there are indeed significant health considerations, why shouldn't you protect workers in their workplace? Why shouldn't you protect residents in their homes?

It seems to me that this is really just trying to identify a few groups in the community who people might think, on a motherhood basis, deserve special treatment. The reality is that, if there is a genuine basis for the concern, you would not allow mobile phones at all.

In terms of the precautionary principle, Senator Margetts seemed to think that that said you were not entitled to take any risks. The precautionary principle is based on the knowledge that some thing or action will have an actual or potential effect. We have adopted a policy of prudent avoidance, and we continue to remain open to any evidence that suggests there is a higher level of risk than is currently believed to be the case. Obviously, we are not just saying that $4.5 million is it. If there is a basis for continuing or additional concerns and it requires further funding, obviously the government would be prepared to consider it.

Question put:

That the amendment (**Senator Allison's**) be agreed to.

The committee divided. [12.45 p.m.]

(The Chairman—Senator M.A. Colston)

Ayes	10
Noes	36
Majority	26

AYES

Allison, L.	Bourne, V. *
Brown, B.	Colston, M. A.

AYES

Kernot, C.	Lees, M. H.
Margetts, D.	Murray, A.
Stott Despoja, N.	Woodley, J.

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Childs, B. K.
Collins, J. M. A.	Conroy, S.
Cooney, B.	Crowley, R. A.
Denman, K. J.	Eggleston, A.
Ferguson, A. B.	Ferris, J
Foreman, D. J.	Forshaw, M. G.
Gibbs, B.	Gibson, B. F.
Heffernan, W.	Herron, J.
Kemp, R.	Knowles, S. C.
Lundy, K.	Mackay, S.
McGauran, J. J. J.	McKiernan, J. P.
Minchin, N. H.	Murphy, S. M.
O'Brien, K. W. K. *	O'Chee, W. G.
Reid, M. E.	Reynolds, M.
Schacht, C. C.	Tierney, J.
Watson, J. O. W.	West, S. M.

*** denotes teller**

Question so resolved in the negative.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.49 p.m.)—by leave—I move:

(220) Schedule 3, page 464 (after line 21), after the definition of ***ecological community***, insert:

endangered ecological community has the same meaning as in the *Endangered Species Protection Act 1992*.

(242) Schedule 3, page 486 (line 24), at the end of subparagraph (vi), add "or".

(243) Schedule 3, page 486 (after line 24), after subparagraph (vi), insert:

(vii) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or

(viii) could have an adverse effect on an endangered ecological community; or

(ix) could damage the whole or a part of the habitat of an endangered ecological community;

(244) Schedule 3, page 488 (after line 27), after subparagraph (vi), insert:

(vii) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or

(viii) could have an adverse effect on an endangered ecological community; or

(ix) could damage the whole or a part of the habitat of an endangered ecological community; or

(253) Schedule 3, page 501 (line 11), at the end of subparagraph (vi), add "or".

(254) Schedule 3, page 501 (after line 11), after subparagraph (vi), insert:

(vii) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or

(viii) could have an adverse effect on an endangered ecological community; or

(ix) could damage the whole or a part of the habitat of an endangered ecological community;

Amendment 220 arises out of the Senate committee inquiry; I do not think the others do. They are essentially to include additional criteria for environmental impact to be considered by the ACA when determining whether a facility installation permit should be granted. The other is to include additional criteria for environmental impact which would trigger notification of Commonwealth environmental authorities if a facility is to be installed under state or territory laws before 1 January 1999.

Amendments agreed to.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.50 p.m.)—by leave—I move:

(223) Schedule 3, page 471 (line 10), after "facility", insert "(the ***original facility***)".

(224) Schedule 3, page 471 (line 12), before "facility", insert "original".

(225) Schedule 3, page 471 (line 13), before "facility", insert "original".

(226) Schedule 3, page 471 (line 15), before "facility", insert "original".

(227) Schedule 3, page 471 (line 16), before "facility", insert "original".

(228) Schedule 3, page 471 (after line 18), after paragraph (d), insert:

(da) the installation of an additional facility in the same location as the original facility, where the conditions specified in subclause (4A) are satisfied; and

(229) Schedule 3, page 471 (line 21), before "facility", insert "original".

(230) Schedule 3, page 471 (line 30), before "facility", insert "original".

(231) Schedule 3, page 472 (line 9), after "fully-enclosed building", insert ", the original facility was located inside the building".

(232) Schedule 3, page 472 (line 10), before "facility", insert "original".

(233) Schedule 3, page 472 (line 10), at the end of subparagraph (ii), add "or".

(234) Schedule 3, page 472 (after line 10), at the end of paragraph (c), add:

(iii) the replacement facility is located inside a duct, pit, hole, tunnel or underground conduit;

(235) Schedule 3, page 472 (after line 12), after subclause (4), insert:

(4A) For the purposes of paragraph (3)(da), the following conditions are specified:

(a) the combined levels of noise that are likely to result from the operation of the additional facility and the original facility are less than or equal to the levels of noise that resulted from the operation of the original facility;

(b) either:

(i) the additional facility is located inside a fully-enclosed building, the original facility is located inside the building and the building is not modified externally as a result of the installation of the additional facility; or

(ii) the additional facility is located inside a duct, pit, hole, tunnel or underground conduit;

(c) such other conditions (if any) as are specified in the regulations.

(236) Schedule 3, page 472 (line 13), after "and (c)", insert "and (4A)(a), (b) and (c)".

(237) Schedule 3, page 472 (after line 14), after subclause (5), insert:

(5A) For the purposes of subclauses (4) and (4A):

(a) the measurement of the height of a tower is not to include any antenna extending from the top of the tower; and

(b) the volume of a facility is the apparent volume of the materials that:

(i) constitute the facility; and

(ii) are visible from a point outside the facility; and

(c) a structure that makes a facility inside the structure unable to be seen from any point outside the structure is to be treated as if it were a fully-enclosed building.

These are amendments to expand the definition of maintenance activities to include installation of additional facilities and to provide definition of 'height', 'volume' and 'fully-enclosed building'. They arise out of the Senate committee report recommendations.

Senator ALLISON (Victoria) (12.51 p.m.)—I want to indicate that the Democrats propose to oppose this. Whilst it may not be a major impact activity, we do not think it should be put into the definition of maintenance. Installation is installation, not maintenance.

Senator SCHACHT (South Australia) (12.51 p.m.)—When you said this was the Senate committee report, was that the majority report?

Senator Alston—Yes.

Senator SCHACHT—I do not want to call a division, but I want to put on the record that we oppose it.

Senator MARGETTS (Western Australia) (12.52 p.m.)—I put on the record that the Greens (WA) will also be opposing this amendment.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.52 p.m.)—I want to make it clear that this enables a new facility to be included in an existing building, that is, a fully enclosed building. In other words, it should not in any shape or form be something that is regarded by an observer as an additional structure. For all intents and purposes, it is simply an internal rearrangement or addition. The purpose of these amendments is to allow that to be included in the definition of maintenance so that you do not have to go through all those state and territory planning hoops.

Senator SCHACHT (South Australia) (12.53 p.m.)—That does not change my view as to why we should oppose it. I will not waste the time of the Senate. We oppose it; it is on the record; we will leave it at that.

Senator MARGETTS (Western Australia) (12.53 p.m.)—It is also important that language within legislation is not abused to this

extent just for a convenient end. Apart from anything else, this is a very good reason to oppose this government amendment.

Senator ALLISON (Victoria) (12.53 p.m.)—We are concerned that the definition of maintenance as currently proposed goes well beyond the meaning of maintenance as we conventionally understand it. It would seem to be designed to allow for installation of new facilities, even though they are inside buildings.

We think this is important because the government is proposing to make maintenance facilities immune from state and territory planning and environment laws. The effect of Democrats' amendments 64 and 66 would be to ensure that the wholesale installation of new facilities is allowed to pass without scrutiny under the guise of maintenance. The purpose of our amendments is to ensure that the wholesale replacement of facilities does not fall within the definition of maintenance.

Amendments agreed to.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.55 p.m.)—The Democrats' amendments are next, and I would suggest that they be regarded in the same way.

Senator ALLISON (Victoria) (12.55 p.m.)—I withdraw amendments 64 to 66.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.55 p.m.)—I move:

(238) Schedule 3, page 473 (after line 8), after clause 7, insert:

7A Carrier to restore land

(1) If a carrier engages in an activity under Division 2, 3 or 4 in relation to any land, the carrier must take all reasonable steps to ensure that the land is restored to a condition that is similar to its condition before the activity began.

(2) The carrier must take all reasonable steps to ensure that the restoration begins within 10 business days after the completion of the first-mentioned activity.

(3) The rule in subclause (2) does not apply if the carrier agrees with:

(a) the owner of the land; and

(b) if the land is occupied by a person other than the owner—the occupier;

to commence restoration at a time after the end of that period of 10 business days.

This amendment arises out of the Senate committee report. It contains conditions in respect of carrying out authorised activities, requiring carriers to restore any site disturbance by the installation or inspection of facilities.

Amendment agreed to.

Senator ALLISON (Victoria) (12.55 p.m.)—by leave—I move:

(67) Schedule 3, clause 13, volume 3, page 474 (line 19), omit "may", substitute "must".

(68) Schedule 3, clause 13, volume 3, page 474 (after line 22), after subclause (1), insert:

(1A) Before determining a Code of Practice under subclause (1), the Minister must:

(a) publish a draft of the Code and invite the public to comment on the draft within a period of time that is not less than 30 days after the publication of the draft; and

(b) cause a public inquiry to be held for the purposes of receiving and considering submissions about the draft; and

(c) cause a report of the public inquiry to be prepared; and

(d) cause copies of a report prepared under paragraph (c) to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

The proposed ministerial code of practice sets out conditions that are to be complied with by carriers when engaging in activities immune from state and territory environment and planning laws. The problem with reliance on the code of practice is that we still do not know what it will contain. Moreover, there are no requirements in the proposed legislation for public consultation or an inquiry in developing this code.

While Austel are currently undertaking an inquiry, there is no requirement that findings will be adhered to, nor is there any requirement for future inquiries. This is a notable omission given that, under subsection 117(5) of the current act, the minister must, before determining a telecommunications national code, publish a draft of the code and invite the public to comment on that draft. The minister must then cause a public inquiry to

be held for purposes of receiving and considering submissions about the draft.

It is the view of the Democrats that if such a code is to be determined, a fully open public inquiry is required. Such a requirement would ensure that the community is provided with sufficient time for making its submission, and it would also require that the report stemming from the inquiry be made public. These amendments ensure that this is required by legislation.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (12.57 p.m.)—The government accepts Democrat amendment 67, but we oppose 68 because it raises a number of practical difficulties. We have proposed amendment No. 23, which we will come to when debating the Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996, that will require us to have a code in place by 1 July.

If we adopt amendment 68, that 1 July deadline would become near impossible. Austel is not due to report on its existing public inquiry into the code until 30 April. The code then needs to be drafted and then the Democrats' amendment would require at least 30 days of public comment, followed by 15 days for tabling of a report. So, on that basis, it would be almost impossible to achieve the 1 July deadline.

The amendment would also make amending the code in future very difficult. The Acts Interpretation Act requires the amendment to an existing instrument to follow the same procedures as required for the making of the original instrument. In other words, we would need a very long public inquiry even for minor changes to the code.

Senator SCHACHT (South Australia) (12.58 p.m.)—I accept your view about the transitional period, that you have to get a code in place, hopefully by 1 July, and that with this timetable for the first one you are going to get a bit jammed. But what the Democrats are raising, even taking into account your remarks, is that it is not unreasonable to be able to have some arrangement that lays down somewhere that there be a public process in respect of the code.

I do not know how you would want to do it—whether the actual public process would be in a disallowable instrument separately, or whatever. But I really think that, in the theory of a deregulatory mode and a competitive model, where there are so many issues and the code would have real impact, unless there is some process whereby the code prepared by the ACA is required to go through some public process, you will always have people arguing to knock off the code as a disallowable instrument.

If you do not have some public process, the pressure will always be back in here to knock it off as a disallowable instrument. Whereas, if you have some public process, you would have a much stronger argument to say, 'Look, all the community had a chance to put their view. They went through it all and there was a lot of agony and there were some hearings, et cetera. Therefore, we have had the process. The disallowance is really not now necessary.' Whereas, if you do not, the argument for those who want the disallowance will be strengthened.

Sitting suspended from 1 p.m. to 2 p.m.

Senator SCHACHT (South Australia) (2.00 p.m.)—Just before the lunchbreak I spoke informally with the minister. I wonder whether those informal suggestions I made and that we chatted about are able to be adopted by the government in that, in one form or another, the minister will write to the ACA requesting that public inquiries be conducted unless they specifically announce and give a reason why a public inquiry or public consultation process would not be necessary, and that it all be publicly announced so people may make their own judgments. Informally we agreed that if we do not have a public process it will mean more heat back here arguing over disallowance.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.01 p.m.)—Yes. I can indicate that would be the general approach that I think ought to be adopted as a matter of political prudence by any government. To the extent that the obligation falls on the minister rather than the ACA in deciding on future inquiries, it would certainly be my view that this government should adopt

the same approach. In other words, the starting point would be that you would conduct a public inquiry or obtain public input, and that it would only be in circumstances where there would appear to be a minor variation of the code where you would feel the need, but in those circumstances you would publicly explain why that was the case.

Amendments negatived.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.02 p.m.)—I move:

(239) Schedule 3, page 476 (after line 2), after subclause (2), insert:

(2A) The notice under subclause (1) must contain a statement to the effect that, if a person suffers financial loss or damage in relation to property because of anything done by a carrier in engaging in the activity, compensation may be payable under clause 40.

This amendment arises out of the majority report of the Senate committee. It involves amendments to provisions to require carriers to notify property owners or occupiers of a possible right to compensation that may arise from financial loss or damage resulting from the action of a carrier.

Senator Schacht—Is that a majority report or a unanimous one?

Senator ALSTON—A majority report—4:1:2.

Senator SCHACHT (South Australia) (2.03 p.m.)—I think that was a decision that no-one disagreed with.

Amendment agreed to.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.04 p.m.)—I move:

(240) Schedule 3, page 477 (after line 14), at the end of subclause (7), add:

(e) an area that is:

(i) entered in the Register of the National Estate; or

(ii) entered in the Interim List for that Register; or

(iii) registered under a law of a State or Territory relating to heritage conservation; or

(iv) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.

This amendment will amend the definition of sensitive area for the purposes of requiring carriers to notify landowners or occupiers of its intention to inspect land or install or maintain facilities.

Amendment agreed to.

Senator SCHACHT (South Australia) (2.04 p.m.)—I move:

(2) Schedule 3, page 484 (lines 15 to 21), omit subparagraph (iii).

This amendment and amendment (3) which are on sheet 418 are not the most dramatically pressing amendments we have moved, but I have to say I think they make it easier for the ACA—

Senator Alston—We don't object to (2).

Amendment agreed to.

Amendment (by **Senator Schacht**) proposed:

(3) Schedule 3, page 487 (after line 16), after subclause (7), insert:

Deemed approvals by administrative authorities

(7A) The ACA may, by written instrument, determine that this clause has the effect it would have if it were assumed that a specified administrative authority had given a specified approval for the installation of one or more specified facilities. The determination has effect accordingly.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.05 p.m.)—If I can read this so I can understand it, amendment (3) will allow the ACA to override powers given to state authorities such as councils under the government scheme. In particular, it undermines the requirements of subparagraphs 25(1)(f)(ii) and (iii) that a carrier must have obtained approvals from all of the other relevant authorities before going to the ACA for a permit. The amendment might also be used to deem a council's agreement for the purpose of the installation of broadband cable, even where the council is quite opposed. Problems may also arise if

approval were deemed for the purposes of subparagraph 25 which could effectively prevent a carrier from applying for a permit. They are the instructions I have. I do not know whether that helps.

Senator SCHACHT (South Australia) (2.06 p.m.)—It is true. I do not deny the advice that has been given to you. It is not a backdoor amendment because I lost on the general planning arrangements, but it does strengthen the power of the ACA in the planning process to make it quicker and simpler, even within your method, but it does not override the process that your amendment has put in about state planning appeals.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.07 p.m.)—We can accept it.

Senator ALLISON (Victoria) (2.07 p.m.)—Could I please seek clarification about the purpose of this amendment? Could Senator Schacht explain it?

Senator SCHACHT (South Australia) (2.07 p.m.)—This, I have to concede, is a technical amendment. The effect of it is that it strengthens the power of the ACA to speed up, where they see it necessary, the appeals process—irrespective of my other amendment, which was lost—so that they have more certain power to ensure that the appeal process is dealt with expeditiously. They are not overriding and getting rid of the state power, but they certainly make it clear that they have extra certainty about the way they can deal with the appeal provisions and the appeals.

I emphasise: it is not a backdoor way for me to try to get what I lost earlier this morning, but it certainly strengthens the ACA. The way it was put to me by my legal advisers is that it creates greater certainty about the role of the ACA and being able to ensure that the process is done expeditiously. The government has accepted it, has it not?

Amendment agreed to.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.09 p.m.)—by leave—I move:

(245) Schedule 3, page 496 (after line 30), at the end of clause 42, add:

(4) The Minister may, by written instrument, exempt a specified law of a State or Territory from subclause (1).

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

(5) The Minister may, by written instrument, exempt a specified law of a State or Territory from subclause (2).

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

(6) An exemption under subclause (4) or (5) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

(7) An instrument under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: The following are examples of a law of a State or Territory:

(a) a provision of a State or Territory Act;

(b) a provision of a legislative instrument made under a State or Territory Act.

Schedule 3, page 496 (lines 18 to 26), omit subclauses (1) and (2), substitute:

(1) The following provisions have effect:

(a) a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;

(b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;

(c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally.

(2) The following provisions have effect:

(a) a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether

direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally;

(b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally;

(c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally.

The provisions of schedule 3 relate to state and territory laws that discriminate against carriers. Clause 42 provides that a state or territory law has no effect to the extent that it discriminates, directly or indirectly, against carriers or their users. The amendment is to enable the minister to exempt a discriminatory law, or part of a discriminatory law. There was no direct recommendation arising out of the Senate committee report, but the government recognises the concerns raised: that the discrimination provision may, in certain circumstances, hinder the ability of states and territories to effectively regulate the roll-out of telecommunications infrastructure.

There are circumstances where the state or territory may put in place laws which are legitimately designed to regulate telecommunications infrastructure but, because they are stricter than the laws applying to the industry in general, may be regarded as discriminatory. The minister may, in certain circumstances, consider that these laws should be allowed to remain in effect.

Senator ALLISON (Victoria) (2.10 p.m.)—I think the Democrats support this, but we would like more explanation as to why it is necessary. I understand it allows the minister to exempt, by disallowable instrument, a state and territory law from the provisions of clause 42, which says that laws that discriminate against carriers are of no effect. However, in the explanatory memorandum the government announced that it will not give an exemption from clause 42 for the purpose of imposing a levy on aerial cables. I note that, while we support this amendment, it is our preference to delete clause 42 altogether. That is the next item on the running sheet. Could you give a little more expansion on why this is necessary?

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.11 p.m.)—Senator Allison is essentially correct. Any exemption would be a disallowable instrument but there could be circumstances in which it is desirable to enable the minister to give an exemption, particularly in relation to, as I said, where states or territories may put in place laws which are legitimately designed to regulate telecommunications infrastructure but, because they are stricter than the laws applying to industry in general, may be regarded as discriminatory, in other words telecommunications specific legislation. In those circumstances, the federal minister may take the view that is desirable and that they should be exempt from the regime which otherwise prohibits discrimination.

Senator ALLISON (Victoria) (2.12 p.m.)—Would it be possible to have an example of what could be involved in such a problem?

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.12 p.m.)—An example would be, if the state government had laws in relation to towers in general, you may want to provide specifically for telecommunications towers. So you would be distinguishing between different categories of towers and, therefore, it is a discrimination on the face of it, but it would be one that the Commonwealth would say was justified in the circumstances.

Senator SCHACHT (South Australia) (2.12 p.m.)—On this issue of discrimination, the Democrats have indicated that they will move their own amendment—which I think is 91—to oppose clause 42 and take it right out. That means that the existing position, which local governments claim applies, is that state governments have carried planning laws which allow councils to apply their own

levies—and in New South Wales and South Australia councils are certainly looking at doing that—and the opposition has given very serious consideration to this. We have considered whether we should support the Democrat position of taking section 42 out, which would allow the discrimination to stand in at least two states. Of course, it might not stand very long. State governments might use their constitutional power in those two states—I suspect there is a fair chance that would happen—once councils started putting levies on and raising money which might not necessarily be spent for the purpose of undergrounding as I believe it should be. Any levy should only be spent for that purpose.

Levies might be spent to build a new town hall or other council facilities, much of them socially very useful and which, in themselves, could not be disputed. But then, in effect, that would be a general tax on telecommunications for a non-telecommunications purpose. From the opposition's viewpoint, those are issues that ought to be dealt with when you look at general revenue and tax raising measures.

The philosophical position is that, once you start allowing a tax to be put on a particular infrastructure, whether state or federal, by local government to do something else, you are rapidly going to move towards a less equitable position in the community about tax arrangements that are fair to all. We have enough problem in this country with the difference between federal and state taxation and the levels of taxation between states and within states accordingly. Every time that happens, some inequities occur in the system.

I certainly can understand the angst of all councils, particularly those in Sydney and Adelaide, with the cable being rolled out, and the arrogant way in which they have been treated in this process and their views have been dismissed. People say, 'It's a fair cop; if they can put a levy on it they should do it.' My own view and the opposition's view about this, which our caucus has had a considerable discussion about, is that we believe, in the end, if there is going to be a levy, it ought to be a national levy equitably applied to carriers and not cross subsidised. It ought to be applied for the one purpose of going underground over a reasonable time.

Three days ago in this debate the government took on board some amendments that I proposed on behalf of the opposition. We are still to conclude negotiations to come back later in this committee stage to the suggestion of my amendments being incorporated in the terms of reference for the panel the minister is establishing to report by July next year to himself and to parliament on a program of undergrounding the full cost benefit, et cetera.

I believe that is the better way to go. As a result, I will not support Democrat amendment No. 91 to delete clause 42. I do accept the minister's very legalistic—and I can understand why—further amendment to his amendment No. 245. As I understand it, it makes very clear the position of the overriding power of the minister, the government and this parliament on immunities on a delegation. This allows delegation to the state, but if at any stage we want to take it back or change it, we can do so by various instruments tabled in this parliament or by administrative discretion. I believe that is the correct way to go.

I also want to say to the minister that unless the government, when it gets this report, shows very serious concern about and a commitment to getting rid of overhead cables, you are just going to be on the rack for as long as you are in government, and any future government will be on the rack in one form or another.

Though people, including the minister, say that some areas are now getting used to the cable being around, I am not sure that is totally correct. If you can work out a way in which, over a reasonable period, we can improve the urban landscape and streetscapes of Australia by getting rid of overhead cables, most people will give us all a pat on the back, quite rightly. The mood in the community for environmental reasons, et cetera, has moved quite considerably on these sorts of issues, certainly since Optus chose to make it a major issue by rolling out their cable.

I know the ALGA will be disappointed in the opposition's support of the government on this. But I want to state that I believe the longer-term interest is better achieved by a

general levy being developed at a national level through the processes within this bill and within our structure on managing telecommunications, rather than allowing two states, at the moment, to have a loophole for local government to do it—although I suspect a state government very rapidly would take that over. As Paul Keating once said, never stand between a premier and a bagful of money. If a premier can see a bagful of money by putting his own levy on telecommunications, and we have left a void, they will step in and grab it.

For those reasons, I believe we should keep the national perspective about this. Although councils in New South Wales and my own state will be disappointed in the opposition's view on this, I think in the longer term we will have a better structure.

Senator MARGETTS (Western Australia) (2.20 p.m.)—I need clarification; I may have missed part of your speech. Is it likely there will be a national agreed levy that will assist local councils? Whilst you suggest you would prefer a model which does have a unified agreed national levy that may go to local authorities, is there any likelihood at all that this may happen?

Senator SCHACHT (South Australia) (2.20 p.m.)—The amendment we put into the pot for negotiations with the government to become terms of reference for the review panel made it quite clear. If you read my amendment, which was moved on Monday, I think it was—which seems like five weeks ago—it said two things. The first amendment was to allow, under state planning arrangements, local governments and carriers, if they could reach an agreement on a levy to underground in a particular designated council area, to do so, so long as the levy was approved by the ACA. Therefore, such issues as cross subsidy could not be abused and so on.

The second part of that amendment was to put into the terms of reference the whole issue of the constitutionality of imposing a levy on overhead infrastructure, so that it could be done within the constitution. There are constitutional arguments. I do not think they are very strong because we are the telecommunications power—for example, I could not introduce the levy to this bill in the Senate because that can only be done, under the constitution, in the House of Representatives. I wanted the constitutionality looked at, and that included how you would impose a levy.

Senator Margetts—But you haven't gone further with those amendments?

Senator SCHACHT—No, I deferred those amendments in agreement with the minister. We will try to negotiate, before the committee stage ends, a compromise to incorporate those two matters I have just outlined into the terms of reference in his amendment establishing the review panel to report by July next year on all the issues of undergrounding. After discussion with Senator Allison, we also want to put in the objectives of the bill a commitment to promote the undergrounding of telecommunications cables.

We still have to come back to that before we end this committee stage. I think our side is very close, if it has not done it, to reaching an agreement with the government on that. I do not know whether the Democrats and others have. I find that process to be the most constructive way of doing this rather than just knocking out clause 42 and replacing it with nothing on the basis that two councils may be able, through a state government loophole, to put their levy on when every other state cannot. That is not a satisfactory way to deal with what I think is a national issue.

Senator ALLISON (Victoria) (2.23 p.m.)—The commitment in the explanatory memorandum that the government would not give an exemption for the purpose of levying aerial cables is not reflected in the legislation, as I understand it. Is it correct that it is a note in the explanatory memorandum? If the government changed its mind presumably there would not need to be any further legislation.

Senator Schacht—You can give the exemption to allow it. This is a generic power, as I understand it.

Senator HARRADINE (Tasmania) (2.24 p.m.)—I had indicated to the government that I will oppose clause 42. I have not heard anything in this chamber to convince me to do otherwise. There is no point in carrying on with it.

Senator Schacht—You're supporting the Democrat amendment?

Senator HARRADINE—Yes. I can count as well as anybody else. There is no point continuing.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.24 p.m.)—The answer to Senator Allison's question is that the bill does provide for a ban on discrimination but it also allows exemptions. What is contained in the explanatory memorandum is simply an example of what we would not be inclined to do.

Senator SCHACHT (South Australia) (2.25 p.m.)—To get this clear, if by some chance before your committee even reported a group of councils, led by Tony Abbott on the North Shore of Sydney, came to you and said, 'We've reached agreement with the councils and the carriers about the programming of undergrounding and how to pay for it,' would you be able to, if you so chose, give an exemption saying, 'Yes, the carriers have agreed. I will therefore give an exemption in this area so you can impose a levy'?

Senator Alston—Possible but subject to disallowance.

Senator SCHACHT—Yes, subject to the disallowable instrument being carried by the Senate, you could do that?

Senator Alston—Yes.

Amendments agreed to.

Senator ALLISON (Victoria) (2.26 p.m.)—Before, I go on to move our amendment No. 91, I seek leave to return to Democrat amendments Nos 64 to 66 which I indicated earlier we wished to withdraw. I seek leave to move those amendments at this point.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.26 p.m.)—Perhaps we could also take the opportunity to invite Senator Allison to withdraw amendment No. 91 on the basis that it has already been indicated that it will not be supported by a clear majority of the chamber.

The CHAIRMAN—Senator Allison, am I correct in assuming that you do not wish to proceed with your opposition to clause 42?

Senator ALLISON (Victoria) (2.28 p.m.)—No, the reason I took this opportunity was that I had the call. This has nothing to do with our amendment No. 91.

The CHAIRMAN—I will come back to amendment No. 91 later. At this stage you wish to move amendment Nos 64 to 66; is that correct?

Senator ALLISON—Yes, that is correct.

Leave granted.

Senator ALLISON—I move:

(64) Schedule 3, clause 6, volume 3, page 471 (lines 16 to 18), omit paragraph (d), substitute:

(d) the replacement of a part of a facility in its original location, where the conditions specified in subclause (4) are satisfied; and

(65) Schedule 3, clause 6, volume 3, page 471 (line 24) to page 472 (line 12), omit "replacement facility" (wherever occurring), substitute "partially replaced facility".

(66) Schedule 3, clause 6, volume 3, page 472 (line 10), after "the" (first occurring), insert "partial".

We were concerned that the definition of maintenance as currently proposed goes well beyond maintenance as conventionally understood. It seems designed to allow for the installation of new facilities. We think this is important because the government is proposing to make maintenance of facilities immune from state and territory planning and environment laws. The effect of these amendments is to ensure that the wholesale installation of new facilities is allowed to pass without scrutiny under the guise of maintenance. The purpose of these amendments is to ensure that the wholesale replacement of facilities does not fall within the definition of maintenance.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.29 p.m.)—The government opposes these amendments. I think we already had this debate in large measure before lunch. Clearly, where a replacement by definition is not adding to any problems that would otherwise be preferably caught up in the new planning regime, then it seems to us that it is perfectly reasonable to allow that to occur. This is just another backdoor way of trying to find things that

ought to go through the planning process. This would presumably bump up the costs which have to be passed on to the consumers in due course. If it is a mere replacement then there should be no reason why it would make any change to the visual amenity.

Senator MARGETTS (Western Australia) (2.29 p.m.)—I was not going to necessarily contribute, but I think the minister is responsible for this. The backdoor is actually the government's backdoor at this stage. The fact that they have changed the definition of 'maintenance' means they want installation to be referred to as maintenance so it does not have to go through the process. It is their backdoor and not the Democrats' in this instance, and I am supporting the Democrats on this amendment.

Amendments negatived.

The CHAIRMAN—We will go back to amendment No. 91.

Senator ALLISON (Victoria) (2.30 p.m.)—The Democrats wish to oppose clause 42 in the following terms:

(91) Schedule 3, clause 42, volume 3, page 496 (lines 16 to 30), **TO BE OPPOSED**.

I mentioned earlier in this debate that the Democrats would like to see clause 42 deleted. This is the position of the New South Wales Local Government Association and various other community organisations such as Cables Down Under.

The purpose of this clause is to annul state and territory laws which discriminate, or which would have the effect, even if it is indirect, of discriminating against a particular carrier, against a particular class of carriers or against carriers generally. The passage of this clause, as it currently stands, will prevent New South Wales and South Australian local government authorities from being able to impose rates or levies on carriers. I have already discussed these concerns both yesterday and again today.

If the Senate is not prepared to delete this clause, I urge the government to consider using its ability to override clause 42 to enable local governments to levy carriers in those states where it is currently possible. I suggest that failure to do this is likely to act as a trigger to enormous litigation about the proper application of state and territory laws.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.31 p.m.)—I have nothing to add. We canvassed these issues in the course of the previous government amendment. The government will oppose these provisions to delete clause 42.

Senator SCHACHT (South Australia) (2.32 p.m.)—Just a few minutes ago the opposition indicated in a general discussion on this and the previous government amendment covering the same area that we will oppose deletion of clause 42. I understand very strongly the arguments of the councils concerned, but I have no doubt that within a very short period of time the state governments in both states will gazump the local government power anyway. If they think they can get away with putting a levy on, they will for their own purposes.

I do not think that is going to be an outcome that will last. The better outcome to go for is a national plan, and I commend the action of all councils in forcing this issue to where they will participate in the minister's review, reporting in July next year. I suspect that, if any party in this place tries to run dead on that process, they will then suffer the consequences of a major campaign by local government associations and local people in this country and will bear the consequences.

Senator MARGETTS (Western Australia) (2.33 p.m.)—I support the Democrats' opposition to clause 42. Just to clarify the situation, what is the minister's position on a national plan in that sense?

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.33 p.m.)—We spent quite some time yesterday in canvassing the working group. I have indicated the structure of it and the timetable. In fact, the carriers have already put money on the table to enable high quality independent research to be conducted, and part of that process will involve looking not only at the cost that is likely to be involved but also at the ways in which that cost could be shared and, indeed, if it is thought desirable, how it should be raised.

They are all matters that will take quite some time. As I recall, there is a requirement now in the act to report back to the parliament by 1 July next year. There will be plenty of opportunities but, as Senator Schacht has said a number of times—and I agree with him—this is not a five-minute exercise. If you were to go down this path, it would require probably progressive undergrounding over a period of 10 or 15 years, and there will be plenty of time and opportunity for us all to absorb the financial consequences.

Clause 42, as amended, agreed to.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.35 p.m.)—by leave—I move:

(246) Schedule 3, page 498 (lines 6 to 10), omit clause 45, substitute:

45 Ownership of facilities

Unless the circumstances indicate otherwise, a facility, or a part of a facility, that is supplied, installed, maintained or operated by a carrier remains the property of its owner:

(a) in any case—whether or not it has become (either in whole or in part), a fixture; and

(b) in the case of a network unit—whether or not a nominated carrier declaration is in force in relation to the network unit.

(255) Schedule 3, page 511 (lines 22 and 23), omit "the property of", substitute "owned or operated by".

Amendment No. 246 omits the present proposed clause 45 and substitutes a new proposed clause 45. The intention of the clause, as before, remains to overcome the fixture rule of law whereby in many circumstances an object which is attached to the ground becomes the property of the owner of the land on which the object is situated. The new clause reflects the fact that the regulatory regime of the act does not require that every facility be owned by a carrier.

The other amendment expands the grandfathering provision to ensure that it applies to building structures or facilities operated in addition to those owned by carriers and takes account of the situation whereby a carrier uses or operates a building structure or facility which it does not own. It arises out of the majority recommendation 4.15.

Amendments agreed to.

Senator SCHACHT (South Australia) (2.37 p.m.)—by leave—I move:

(1) Schedule 3, page 504 (after line 10), after paragraph (a), insert:

(aa) the activity does not consist of the installation of a designated overhead line; and

(2) Schedule 3, page 504 (line 12) to 505 (line 7), omit subclause (2), substitute:

(2) Despite the repeal of the *Telecommunications Act 1991* by the *Telecommunications (Transitional and Consequential Amendments) Act 1996*, sections 116, 117, 118 and 119 of the *Telecommunications Act 1991* continue to apply, in relation to the activity, during the period:

(a) beginning on 1 July 1997; and

(b) ending at the end of 31 December 1997;

as if:

(c) a reference in those sections to a carrier (within the meaning of the *Telecommunications Act 1991*) were a reference to a carrier (within the meaning of this Act); and

(d) a reference in those sections to AUSTEL were a reference to the ACA; and

(e) a reference in section 117 of the *Telecommunications Act 1991* to paragraph 327(b) of that Act were a reference to section 470 of this Act; and

(f) a reference in section 117 of the *Telecommunications Act 1991* to Part 14 of that Act were a reference to Part 25 of this Act; and

(g) that repeal had not been made.

(3) Schedule 3, page 505 (after line 28), after paragraph (a), insert:

(aa) the activity does not consist of the installation of a designated overhead line; and

(4) Schedule 3, page 506 (lines 1 to 20), omit subclause (2), substitute:

(2) Despite the repeal of the *Telecommunications Act 1991* by the *Telecommunications (Transitional and Consequential Amendments) Act 1996*, Division 3 of Part 7 of the *Telecommunications Act 1991* continues to apply, in relation to the activity, during the period:

(a) beginning on 1 July 1997; and

(b) ending at the end of 31 December 1997;

as if:

(c) a reference in that Division to a carrier (within the meaning of the *Telecommunications Act 1991*) were a reference to a carrier (within the meaning of this Act); and

(d) a reference in that Division to AUSTEL were a reference to the ACA; and

(e) that repeal had not been made.

(5) Schedule 3, page 507 (lines 9 to 30), omit paragraphs (b) and (c), substitute:

(b) the activity does not consist of the installation of a designated overhead line; and

(c) either:

(i) the activity did not commence on or before 30 June 1997 and the failure to commence the activity is attributable to a restraining injunction granted on or after 5 December 1996; or

(ii) the activity commenced on or before 30 June 1997, the activity was not completed on or before 31 December 1997 and the failure to complete the activity is attributable to a restraining injunction granted on or after 5 December 1996.

(6) Schedule 3, page 508 (lines 20 to 31), omit subclause (5), substitute:

(5) For the purposes of the application of this clause to a particular activity, the ***transitional period*** is the 6-month period beginning on 1 July 1997. That period is extended by one day for each day on or after 1 July 1997 during the whole or part of which the activity is the subject of a restraining injunction granted on or after 5 December 1996.

(7) Schedule 3, page 509 (line 18) to page 510 (line 9), omit paragraphs (b) and (c), substitute:

(b) the activity does not consist of the installation of a designated overhead line; and

(c) either:

(i) the activity did not commence on or before 30 June 1997 and the failure to commence the activity is attributable to a restraining injunction granted on or after 5 December 1996; or

(ii) the activity commenced on or before 30 June 1997, the activity was not completed on or before 31 December 1997 and the failure to complete the activity is attributable to a restraining injunction granted on or after 5 December 1996.

(8) Schedule 3, page 510 (line 26) to page 511 (line 4), omit subclause (5), substitute:

(5) For the purposes of the application of this clause to a particular activity, the ***transitional period*** is the 6-month period beginning on 1 July 1997. That period is extended by one day for each day on or after 1 July 1997 during the whole or part of which the activity is the subject of a restraining injunction granted on or after 5 December 1996.

The simple intent of my amendments is to make it clear that the cut-off date for the roll-out of cable around Australia is 1 July. The government's position is that there be three months extra allowed for so-called completion of the already planned roll-out on the network. I think there is also an indication that if legal actions may have delayed the carriers' plans et cetera they can have that added on as well. Our position is very simple. Well over 12 months ago back in January 1996 the then minister made it pretty clear and again emphasised that the immunities would end on 1 July. We also announced, going right back to 1991-92, that in the duopoly or triopoly model the immunities of the three carriers could only be guaranteed after 1 July. Before that, the parliament would review it—which we are doing now—and introduce legislation that may change the immunity.

That was made very clear and explicit in policy statements by the former government. The roll-out of the cable was always taken on by the carriers knowing that before 1 July the law could be changed and a different operation could be available post-1 July this year.

That is the common expectation in the community and amongst councils and, up until a few months ago or some time last year, the common expectation of all the carriers. But the carriers—in particular Optus and to some extent Telstra—in their desperation to get the cables rolled out before any sort of exemption or local government appeal is allowed, have said that they now want another three months added on. Well, I think it is an absolutely outrageous ask—to extend it beyond 1 July.

Optus decided to roll this cable 3½ years ago, I think it was, back in 1994-95. They did so knowing 1 July was the deadline. Telstra

in wanting to do roll-out to match them also knew 1 July was the deadline. I think it is very cheeky indeed to say, 'Well, we haven't quite finished the roll-out. We've still got a plan on the table. We might have put a bit of extra wire up and we may have tabled a street map of Adelaide or Sydney to say we were going to do this in the same plan.' I just say, 'Bad luck.'

I really think it is very unusual. In most other areas of legislation, when you give years notice that the immunity or the position under the law would change and there is no guarantee beyond that date, people have planned accordingly. These carriers are asking for an exemption that most other people, major organisations and community groups have never got. When a parliament gives a cut-off date, you know that that is what it is going to be and you plan accordingly.

I think it is a very rich ask indeed to extend the roll-out by three months, so that is why the opposition has moved its amendment, which is to make it clear that 1 July is the cut-off point for the roll-out and that that is the end of it. I hope that in this case we do get a majority in the Senate to support that cut-off date, because the carriers, up until last year, fully and absolutely understood that the deadline was 1 July of this year.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.41 p.m.)—I do not think it is correct at all to say that the carriers have been on notice for some years, as Senator Schacht seemed to suggest. What the carriers and, I think, the community knew some years ago was that from 1 July there would be full and open competition and presumably a whole new regime.

Senator Schacht—And the act has to be changed.

Senator ALSTON—Well, to say the act is going to be changed does not in any shape or form mean—

Senator Schacht—Yes, it does.

Senator ALSTON—sudden death cut-off. It means that the act is going to be changed. That is all it means. In every situation where there are high stakes involved transitional arrangements are normal. That does not just mean you have an extra three months; you have got to have commenced construction by 30 June and, in order to get to that point, you need to have made your planning applications, which means, for practical purposes, that unless those are in place by April—so, within the next six weeks—it will not happen anyway.

But the reality is, as you well know, that the carriers have each embarked on $3 billion to $4 billion roll-outs. They do that on the basis of your legislation some years ago and they do it without any knowledge that you are suddenly going to remove what people would always expect in these situations—that there would be transitional provisions. And in these circumstances they are the minimum necessary to enable some continuity in building networks where traditionally there is a long lead time.

It is one thing to say that it is just a matter of building something or creating something that can be done very quickly; it is just a matter of turning off the tap. That is not what happens here. You make your plans, you decide how far you are going to go. You do not just say,' We'll get halfway through Adelaide and we'll stop.' The fact is that—

Senator Schacht—They could have started Adelaide earlier.

Senator ALSTON—Well, you could say that but you are being utterly oblivious to the financial consequences.

Senator Schacht—No, I'm not at all.

Senator ALSTON—You cannot just go back and say, 'You should have started something some months earlier' when they have a staggered roll-out where, as we know, they concentrated on Melbourne and Sydney first, then they went to Brisbane and then they moved to Adelaide. It is no use saying, 'Well, with hindsight, you should have been rolling out everywhere at once so you got it all done at the same time.' The physical resources are not there to do that. If they are to embark on a sensible strategy to recoup their investment over a period of time, then they need to do it in such a way that there is a progressive roll-out. And that is what has happened here.

As you know, we took the view—and I think a lot of people in Adelaide would take the view, as we now see from some of the agreements that are being reached—that they did want a progressive roll-out; that they did not just want a sudden death cut-off on 30 June. And we think it is a very important requirement to allow for transitional arrangements for the installation of those facilities, particularly where legal action has restrained the commencement or the completion of an activity in the event that the action proves ultimately unsuccessful.

The introduction of the new national code further delayed the roll-out. There is no doubt that the Dunford decision in New South Wales, which applied particularly to Optus, would again have set its planning processes back some months. They had to go back to the drawing board, basically. You cannot blithely say,'Oh, well, you should just speed up the process' or 'You ought to press button A' or 'Go a bit harder on the accelerator.' There is only so much capacity in the system; there are only so many firms involved in roll-outs; there is only so much money available according to the loan facilities that you have in place.

It would be a very irresponsible position to adopt to simply say, 'Don't care about the financial consequences; don't care about the people of Adelaide; don't care about anything other than the fact that we are going to knock you off on the dead of midnight on 30 June,' when the carriers would have had every legitimate expectation that things were going to change dramatically from 1 July 1997 but no knowledge and no reason to anticipate—unless you have been out telling them—that there would be no transitional arrangements. Why would they not have been entitled to assume that? That is always the case in large investment expenditure items, and it is no different in this situation. So we very vigorously oppose these amendments.

Senator MARGETTS (Western Australia) (2.46 p.m.)—So little time; so many cables. I think that is the message we are getting. Carriers are frightened that they will not be able to cable out as much as they want before there is any accountability to the community. I would refer the minister back to the words of his own finance department representatives right at the beginning of the Telstra inquiry. One of the first questions I asked was this. I do not have the words here—I will have to check—but I clearly remember it: what are the expectations of the carriers in relation to having to abide by state and local planning regulations in relation to 1 July 1997? They said, 'They are expecting to have to abide by them.' That was one of the very first questions I asked of your own finance department.

Senator Alston—Wouldn't it be fairer to ask the carriers themselves and not think that you can simply take words out of the mouth of a bureaucrat as binding them quite deleteriously?

Senator MARGETTS—If you were to ask many industries and many businesses in Australia what they would like, whether they would like extra time to do exactly what they would like to do or whether they would listen to what community and government say, you would be fairly sure in knowing what they would want. They would want the longest time possible. I would refer you back to those questions and answers because if you are saying, 'Who gave them an expectation?' I would have to say that your own government departments were partly responsible. Check back and see what your own finance department answered to some of my initial questions to them. The legitimate expectation that we were given, in concern about environmental issues, was this: the expectation is that from 1 July 1997 they will be subject to state and federal planning laws and normal procedures. So the expectation has been around for a long time; it is not a surprise; it is not the need for retrospectivity. If they have not even got planning approvals yet, you can hardly say that they have committed the money for post-July 1997 roll-outs. You are left without a leg to stand on, Minister.

Senator ALLISON (Victoria) (2.48 p.m.)—We will support the opposition amendments. It is a much more selective approach to deleting transitional provisions than we would advocate. Our amendments which follow are much more expansive. The only transitional provisions we believe should remain are those

that are in clause 55. In our view, everyone has known and has been waiting for the introduction of the new regime on 1 July this year and I do not need to expand on the comments already made by Senator Margetts and Senator Schacht in this respect. We think there is no need at all for transitions.

I do want to ask the opposition why they have been selective in this. What has not been mentioned so far is the fact that there is a transitional period for mobile phone towers which extends to the end of December this year. Our amendments will seek to address that. Why did the opposition choose just aerial cabling and not mobile phones—I assume that is the intent of your amendments?

Senator SCHACHT (South Australia) (2.50 p.m.)—For consistency in our position on the record, going back to the previous minister, we consistently made it clear that, notwithstanding their own program, cabling would end on 1 July. We are sticking to that position, although we have the right to say, 'Yes, the transitional arrangements should end on 1 July; there should be no transitional arrangements for other infrastructure.' At the time we did not make those statements.

We could accept your amendment, but we will not. We believe the issue on cabling is unique and clear cut. We made previous statements and carriers made statements and accepted, back when they rolled it out, that 1 July was the deadline. I cannot remember similar debate at the time about the construction of mobile towers being rushed ahead to meet a 1 July deadline. That was a decision of the carriers. They used their existing immunity; there was not the same argument about towers. Some of that argument about towers has come in the meantime. I will give those towers that are under construction the benefit of the doubt because the argument was not the same. The previous government clearly indicated over 15 months ago that the cabling would end on 1 July, and I will stick to that position.

Senator ALLISON (Victoria) (2.51 p.m.)—I will take that a little further: does this mean that the opposition would support a longer term exemption? I do not understand why we have the six-months provision. Does that indicate that the opposition would support exemptions of towers on a permanent basis? I still do not understand what the difference is.

Senator SCHACHT (South Australia) (2.52 p.m.)—The difference is that those towers at the moment do not need local government approval. There is a consultation process, but those towers are being built without a planning process. Those that are under construction can finish and they have to finish in the six-month period.

After that—and this is what we have been arguing for all day—all new towers of all shapes, sizes and heights can be appealed against by the local council. They are not low impact facilities.

So for any new tower planned after 1 July, you have to go through the planning process—which the minister has won the day on—which is that councils approve or argue with the carrier. If there is a dispute, it goes to a local government body, a state planning appeal tribunal, et cetera. If there is still a dispute, it could end up with the ACA. That is the big difference. Any new tower that is not commenced, planned or under way by 1 July automatically falls within the arrangements of the new planning provisions of this bill.

So some towers will be finished, but the difference is we never made statements that on 1 July the towers would have to end and that would be it if you had not finished. On cables, we certainly did say 1 July was the deadline.

Senator LUNDY (Australian Capital Territory) (2.53 p.m.)—I would like to reinforce the points made by Senator Schacht. What we are dealing with here is an expectation by the community. The government's position on this will only create far greater industry consternation with the government and send a message that, if you lobby hard enough, you can stretch these occurrences out a bit.

I do not think that is the way to deal with an industry currently undergoing a major transition to deregulation. It will reinforce the message from this government to the industry

that, if you roll out a few people, get in the government's ear and give them a bit of a working over, you too can extract a three-month concession on various issues.

This amendment is obviously important. As Senator Margetts said, the question has been asked very, very specifically on so many occasions and, Minister, you have been very, very specific in your commitment to this previously. Yet, when it comes to the crunch, you stretch it out.

I do not believe this is acceptable. Your going all wobbly on that commitment now basically indicates that you are susceptible to pressure from carriers based on economic considerations and nothing else, including the concerns of the community.

Senator HARRADINE (Tasmania) (2.55 p.m.)—I just want a bit of clarification on Senator Schacht's amendment. Am I correct in saying that your proposal seeks to remove transitional periods for completion of facilities approved and commenced under existing arrangements but not finalised by 30 June? Or are you saying that, if they are approved and commenced at this stage, they can be completed? Am I clear on that?

Senator SCHACHT (South Australia) (2.56 p.m.)—Yes, you are clear on that, other than for cables. My amendment No. (3) states:

Schedule 3, page 505 (after line 28) . . . insert:

(aa) the activity does not consist of the installation of a designated overhead line—

Senator Harradine—Yes.

Senator SCHACHT—So you are right. As for removing the transitional provisions for other facilities, yes. That is the point Senator Allison raised with me: what about towers?

Senator HARRADINE (Tasmania) (2.57 p.m.)—I understand that. I think there is a valid argument to suggest that the players would not have been blindfolded about these moves. They must have realised that certain things would be in process. They must have realised that there would be this legislation. I am a bit worried about adopting a provision which, in effect, is retrospective. But at the present time, frankly, I cannot see that the proposal advanced by the opposition has retrospective effect.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (2.57 p.m.)—I think the concern is not so much that it is retrospective but that the carriers would have had a legitimate expectation that there would be transitional provisions in place. As I have said, it is one thing to anticipate that from 1 July there will be very different rules in the game; it is another thing to say that, if you have not actually completed something by that date, it is a sudden-death cut-off. What the transitional provision allows is that, if you have obtained approval—that process normally takes a couple of months—and you have commenced construction, you have to complete it within the three-month period.

Senator Schacht's amendment would simply say that you do not have that luxury; you would have to complete it by 30 June. If you are halfway through, that is bad luck. That is a very tough position to adopt because there was never any suggestion that there would not be transitional arrangements. All that was understood was that there would be a different regime.

As I have said, the carriers are entitled to plan their roll-out accordingly. You cannot do everything at once. You have to do it on a phase basis. As we know, in order to accommodate Adelaide—which was one of the four capital cities targeted in the first instance—and complete that roll-out, it was made perfectly obvious that could not be done by 30 June. That was for a combination of reasons, but the national code certainly slowed matters down.

As I have said, the Dunford decision some 12 months ago caused Optus in particular to go back to the drawing board and get a whole new set of plans in from the United States. In other words, they fundamentally delayed their ability to meet a 30 June deadline—

Senator Schacht—What about due diligence? That's their problem.

Senator ALSTON—That is not due diligence.

Senator Schacht—They should have prepared their themselves better.

Senator ALSTON—How can they anticipate a court case going against them?

Senator Schacht—That is what you anticipate in a good business plan.

Senator ALSTON—You take Booroondara obtaining an injunction. That meant that Optus was simply frozen out of the game for something like six months or more. Sure, there has been a deal done recently whereby Optus and Booroondara Council have come to an agreement, but it is getting very late in the day. In order to plan sensibly for these things, you normally allow a transitional period when there are very large investments involved. It is not as if it is a question of building a few things here and there—it does not really matter, you can do it on an incremental basis. You are not doing that here; you are building part of a network. It is not much use saying, 'Well, we have built half the network in Adelaide, half the—

Senator Schacht—You are not building a full network; you're only building 20 percent—

Senator ALSTON—That is the fact.

Senator Schacht—And Adelaide came last.

Senator ALSTON—Someone has to come last. They do not reach Perth and other areas. They have to do it on a phased basis. It is no use saying, 'We're satisfied if only half of Adelaide's been done. Sorry, the clock has stopped ticking.' It has been made very clear that in order to complete the roll-out in Adelaide, it was necessary to take advantage of what you would normally anticipate in any changed regime. The notion of transitional arrangements is not a novel one. It is certainly not confined to telecommunications. You have transitional arrangements all the time.

If there had been an act of parliament or a formal statement made by the government, say, two or three years back, which said, 'You are on notice that there are no transitional arrangements; all bets are off on 30 June,' I could understand your argument. Because then they would have the opportunity to plan when there is still time, to invest more expenditure, to perhaps work twice as hard—24 hours a day—and make sure it fits within a time frame of which they had full and formal notice. That is not the case here. They have never been told that there would be no transitional arrangements. All they knew was that the ball game would change on 1 July. That is in a very different context. That is all about full and open—

Senator SCHACHT—You've changed the finishing date to 30 September.

Senator ALSTON—No, but you have not. That is the point. **Senator Schacht**—You have.

Senator ALSTON—No, we have not. Otherwise it would not matter whether you started construction before 30 June or whether you had obtained authority before 30 June. If your argument was right, all you had to do was get all that done before 30 September. That is not the requirement. The transitional provisions require that you have been through the planning process and commenced before 1 July. It is not a matter of just saying you have an extra three months. In order to qualify for the extra three months, you must have gone through both the planning processes and started the construction phase.

The reason that occurs is to enable them to complete a commitment that they embarked on several years ago—a multibillion dollar outlay, a roll-out that has been progressive and that allows them to have a sensible phase down. Otherwise it is sudden death, with you saying, 'Who cares? It does not worry me what their plans might have been.' They were never given notice that there would not be transitional provisions. All they were told was that it was going to be pretty different after 1 July. Of course it is.

What we are doing now is setting a new framework in place that regulates a whole host of things, not just roll-out of overhead cables. This is all about telecommunications into the 21st century. That is what they would have expected would happen on 1 July. They were not being not told: 'And as part and parcel of that, no more overhead cables rolled out.' They were never told that. You produce the evidence. You show me where any minister on your side said, 'You're on notice, you're not going to get any transitionals. Sudden death.' They simply were not told that.

Senator MARGETTS (Western Australia) (3.04 p.m.)—I would like to be helpful in this debate. I mentioned some extracts from *Hansard* from the inquiry into Telstra. Let us get this into context. The only reason the other carriers have exemption from state and federal planning laws is that Telstra had it and they argued that, for competitive reasons, they were being disadvantaged. We all knew, and we were told, the expectation was that that would finish on 30 June 1997. The only reason they had it, different from other businesses, is that Telstra had it.

There was never, as far as I am aware, an industry plan that says, 'This industry has exemptions.' The reason it was argued and the reason those exemptions were given or extended to companies other than Telstra was that Telstra had them, and Telstra knew that those were to finish. I would like to indicate that on 26 June 1996 at the hearing of the Telstra (Dilution of Public Ownership) Bill reference committee inquiry, I asked Mr Hutchinson about planning and environment laws. He said:

> . . . we would expect the effect on value to be negative, relative to those continuing—

this is in relation to the prospective price of Telstra—

> At the moment, most people in the market, we are told, are assessing the value of Telstra on the basis that those exemptions will end on 30 June 1997. To the extent that people are speculating on the value of Telstra, they are speculating on a value that has those powers and immunities terminated in some way, shape or form. If they are extended, then perhaps that will add value.

He is saying that the market was expecting that that would be the status quo, but they would get a benefit in their pocket. The market, the people speculating on the price of Telstra and those other utilities would get a bonus in their pocket if they got an extension.

That is what we are talking about, isn't it? It is about getting the corporations a bonus in their pocket or the prospective sale price upped on the basis that we would extend market expectations. I asked:

> Telstra is currently exempt from environmental laws—Optus is exempt- and you are expecting that those exemptions will end?

Mr Hutchinson said:

> No. I have no view as to whether they will end, because that is a matter for government policy.

I asked:

> But you believe that the respective buyers are expecting that they will end?

Mr Hutchinson said:

> The analysts in the market who are presently assessing the value of Telstra tell us that their assessments were predicated on the assumption that that would end; therefore, if it does not end, there will be an increase in value.

So rather than their legitimate expectations being an extension, the market analysts, who have their noses to the ground, were expecting it to end on 30 June—so we were told by the Department of Finance—and they get a bonus in their pocket if you allow them to have an extension.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (3.07 p.m.)—I would seek a formal apology from Senator Margetts. She said to a us short while back that the carriers had made it clear in that inquiry that they were expecting this regime to finish on 30 June. We are now told that the market expects it or analysts expect it—an entirely different proposition.

To somehow come in here and suggest third-hand, in the context of what value you attach to Telstra, that some analysts were expecting that the regime would change—and I think you talked about it being in some way, shape or form—and pretend that that is tantamount to saying that they understood there would be no transitional provision simply defies logic and commonsense. It is just another snide way of trotting out some anti-capitalist conspiracy theory to suggest that—

Senator Margetts—This was your finance department.

Senator ALSTON—It has nothing to do with transitional provisions; nothing at all—to quote you—in any way, shape or form. The question is: what do they expect after 30 June and what do analysts think will be the effect on Telstra's value? It has nothing to do with what the carriers thought—

Senator Schacht—That is what Hutchinson said.

Senator ALSTON—How would Hutchinson know whether the carriers were aware that there would be no provisional transitions? It is absolute nonsense. If you had the carriers saying, 'We were aware because we had been told by this government or that government that there would be no transitional provisions,' that would be a very different ball game because then you would have expected them to have made their plans accordingly. But it is entirely the opposite to say that there is going to be a new regime after 30 June. Everyone knew that years ago. What does that have to do with whether there will be transitional provisions? If you are involved in a $3 billion to $4 billion roll-out, as each of these carriers is, and you have to plan these things years ahead, the last thing you want to be told just before you get to the deadline is, 'Sorry, sport, no transitionals. You might expect them in other areas but not here, even though there are huge investments at stake.' That is the most grotesque distortion of Senate evidence I have ever come across.

Senator SCHACHT (South Australia) (3.09 p.m.)—That is a pretty sweeping statement, Minister, so we will not hold you to it.

Senator Alston interjecting—

Senator SCHACHT—From you, probably, sometimes. When Optus made the decision to roll out their cable, which I think was back in 1994 or late 1993 or thereabouts, they did so on one simple basis. They had until 1 July 1997, under existing government policy: the law would not be changed on immunities up until that date. They knew there was a review. They knew there would be a new law and that, under that provision of law, from 1 July—which we are now debating—the parliament may choose to change the law on immunities.

Senator Alston—May choose, yes.

Senator SCHACHT—May choose. Therefore Optus, as a board member, with due diligence—unless they are complete idiots—would have said, 'Let's check the legislative basis on which we are planning this $2 billion or $3 billion roll-out.' If you mean to say they all sat there, as directors, and thought that this regime was not going to change beyond 1 July when there was an announcement that the immunities would be up for reconsideration some time before or after a major review, they should be taken out by their shareholders now and sued. It would be an absolute breach of due diligence for them not to have thought to go out and check the legislation.

The announcements made in 1994-95, when they started the roll-out, were quite clear and succinct. They had until 1 July to get the cable past 20 per cent of Australian homes, wherever they chose to roll it. They chose to do it city by city. They chose to put Adelaide last. They chose to leave Perth until sometime whenever, Hobart until whenever, and the rest of regional Australia maybe never. They made that decision knowing that, by 1 July, their aim was to get that cable past 20 per cent of Australian urban homes. They chose to leave Adelaide until last; we are not unused to that in Adelaide—being left until last or second last on most planning decisions by boards established in Sydney or Melbourne.

The issue of this transitional arrangement has only come about in the last 12 months. You would have to be blind not to expect that some objection would be made by councils and communities when, out of the blue, a new cable is hung down the streets of Sydney, Melbourne and Brisbane or that there might be a little bit of a reaction and agitation. But, to their astonishment, they got it wrong. Councils and communities looked at every opportunity for stopping it and at what the planning arrangements were. There were injunctions taken out, and they had to go back and do it again. That was their mistake—still within the 1 July deadline.

During 1996, it was Optus which came forward and lobbied for a transitional arrangement. It was not proposed by the department or the minister; it was around the place that they were out lobbying for the transitional arrangements. They were saying to you, Minister, 'There has been a bit of a delay. We have a bit of a problem. Adelaide is a bit of a mess because of all those Bolshevik councils down there,'—all Marxist led apparently, according to the definition you gave Senator Margetts—'are on the warpath. We may not be able to complete it now.' They have

banners all over Adelaide saying 'No Overhead Cables for Adelaide' and 'Don't Connect to Optus' et cetera. Those councils took that decision.

If the board of Optus did not realise, through all of this period, that there were going to be some delays and hiccups along the way, that is their problem. But they came to you to ask for the transitional arrangement to get an extension. In fact, they asked for six months; you cut them back to three, as I understand. If you could have given them nine months they would have accepted that. If you had given them absolute immunity forever they would have been very happy with that as well.

The question of transitional arrangements was not put on the table by the government and it certainly was not put on the table by the previous government. It came from the carriers to enable them to get themselves out of a hole of their own making. I find that extraordinary. I do not mind carriers saying that in reasonable areas but when it was consistently a matter of public debate and when they themselves said, during 1995 and 1996, 'We have to complete the roll-out by 1 July because that is the deadline,'—they said that during 1994-95 and until 1996 when they started asking for a transitional arrangement—I find that duplicitous. All through those years, when this cable was being rolled out, the carriers themselves said that they knew the deadline was 1 July. We are doing nothing here. I think Senator Harradine made the point that we are not, with retrospective legislation, knocking them off. It is for the future; they have had fair warning—1 July is the date.

I have only been in the parliament nearly 10 years. I cannot recollect too many times where there has been fair warning given that legislation may be amended—and the rules are changed openly and transparently, and fair notice is given that they may be changed—that people have not said, 'If parliament has changed it when they said they would look at it, that's a fair cop.' To say that these carriers are being unnecessarily and harshly treated is just not correct. Therefore, I really have to say, for the sake of the credibility of this parliament and the legislation we introduced six years ago about the cut-off date, and for the expectation of the overwhelming majority of Australians who have had the issue of cables in their suburbs and their streets, we have to stick to 1 July. I urge the Senate to support it.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (3.16 p.m.)—I make this point again because it is very important to understand it. If you have a small-scale project, and you make a decision that it is going to take you a period of months to do and you have a deadline to meet, you normally plan and allow a bit of slack in the system. When you are engaged in a $3 billion to $4 billion rollout over a period of years, it is very difficult to anticipate precisely how far you are going to be able to get.

The reality—from their point of view—is that knowing that 1 July is a critical date, they were never going to be able to cable the whole of Australia. All right?

Senator Schacht—But they never planned to. They only planned 20 per cent.

Senator ALSTON—How do you know that?

Senator Schacht—It was in their plan.

Senator ALSTON—That may well be because they knew that it would not be possible to get beyond 1 July and go beyond three or four capital cities. What they no doubt did was to plan on the basis that they would be able to get to that point in time to meet a new changed regime. I cannot speak for them, but I think it is pretty obvious that there were a number of factors that they may not have been able to anticipate.

The Dunford decision must have paralysed them for a number of months; that is certainly what my information was.

The local community reaction, including injunctions being taken all around the place; then all those revisions to the code and the uncertainty attached to all of that; and then the actions taken in Adelaide, which effectively put them back at least some months—all of those things are not something where you can just press a button and say, 'Okay, a quick adjustment; we will just make sure we work

twice as hard and we will still finish it by 30 June.'

You have a long lead time. You have to plan towards it. You get to a point where it is simply not possible to complete. To get halfway through may be worse than not starting at all because you raise expectations amongst those who miss out and you have the worst of all worlds. That is precisely why transitional provisions are the norm in large-scale projects—in order to enable some opportunity to wind up or round off or complete a task that has been embarked on. For you to simply say, 'Well, that's their problem,' shows a callous disregard for the potential beneficiaries—in other words, the citizens of Adelaide, most of whom are probably very keenly looking forward to getting AFL television.

Senator Crowley—We'll speak for ourselves, thank you, Senator.

Senator ALSTON—I am not assuming that you would be interested in AFL television, Senator Crowley.

Senator Crowley—You've got it wrong again.

Senator ALSTON—All right. I am delighted to know that Senator Crowley, at least, on your side has been eagerly anticipating it. To suddenly find the rug pulled out from under her feet is terribly unfair. I hope there will be a South Australian caucus meeting on this before the matter comes back, as it inevitably will, on Monday.

Senator Schacht—You ask Chris Gallus what she thinks of overhead cabling.

Senator ALSTON—What we are addressing here is whether it is reasonable to allow a carrier with a major investment program to complete, within a short time frame, work that has already been commenced by 30 June and for which planning approvals would need to have been obtained in practice by the end of next month. That is not an unreasonable requirement. Those who want to stop the cable rollout by hook or by crook have tried everything along the way. To say there should not be any transitional provisions is simply perfectly consistent with that approach, but it is not normal business practice. It is not what those investing from overseas would expect of a sensible political process.

Senator Margetts interjecting—

Senator ALSTON—We are about to have another multinational bash. Away we go, any opportunity that arises to say that this is all grubby shareholders making money, that this is going into the pockets of investors. This is sacrilegious as far as Senator Margetts goes and I refuse to be provoked any more.

Senator ALLISON (Victoria) (3.20 p.m.)—Talking of provocation, I was not going to speak again on this matter, but the minister pushes me to do so. It is pretty clear that he is talking about getting aerial cabling done for the rest, which includes most of Adelaide.

I would like to remind the minister about a couple of things he said in the not too distant past. One was in a private meeting with me late last year. During the meeting he indicated that there would be no new national code; there was not a reason to have one because, as we all understood it, as of 1 July, the new regime would be in place and that would be a guarantee of the end of immunities. His press release of 4 April 1996 states:

> Community concerns about the environmental impact of telecommunications facilities such as aerial cabling and mobile phone towers are being addressed by the Government as a matter of priority . . . The Government aims to have a new code in place from 1 July. . .

I have about eight pages of comments. They state:

> Accordingly the government will, after public inquiry, put in place from 1 July a new code . . . The new national code will operate in the period leading up to 1 July, when a regime based on state and territory laws also announced by the minister today would take over.

In none of these documents—and they all come straight from your office, Minister—is there any reference at all to a transitional period during which the completion of the cabling could be put in place. They all talk about 1 July as being the end of one regime and the beginning of another, at which time carriers need to go through normal council procedures. So there is absolutely no doubt that the community, the Senate, the rest of the

parliament, the carriers and local government all understood that this was the case.

We can only conclude by that that you do not have, as you said, the concerns of the community as a matter of priority. Senator Tierney has gone around saying that there is nothing much that this government can do about aerial cabling, that they are doing their best but what they have been left with from the previous government ties their hands. We see here a perfect opportunity for the government to do something about all these concerns that they seem so worried about.

People like me, Senator Margetts and members of the opposition are seen to be stopping the roll-out. What nonsense! All we are doing is saying that after 1 July the state and territory laws come into play and that this protective regime that we have had for carriers would cease on 1 July. We are not wanting to stop the cabling roll-out; we are simply suggesting to you that it is time to get them underground. The industry understood that and so did everybody else.

Question put:

That the amendments (**Senator Schacht's**) be agreed to.

The committee divided. [3.28 p.m.]

(The Chairman—Senator M.A. Colston)

Ayes	28
Noes	28
Majority	0

AYES

Allison, L.	Bishop, M.
Bourne, V.	Brown, B.
Carr, K.	Childs, B. K.
Collins, J. M. A.	Conroy, S.
Cooney, B.	Crowley, R. A.
Foreman, D. J. *	Gibbs, B.
Hogg, J.	Kernot, C.
Lees, M. H.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	O'Brien, K. W. K.
Reynolds, M.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Colston, M. A.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J
Gibson, B. F.	Heffernan, W. *
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.
MacGibbon, D. J.	McGauran, J. J. J.
Minchin, N. H.	O'Chee, W. G.
Parer, W. R.	Reid, M. E.
Short, J. R.	Tierney, J.
Vanstone, A. E.	Watson, J. O. W.

PAIRS

Denman, K. J.	Macdonald, I.
Faulkner, J. P.	Coonan, H.
Collins, R. L.	Newman, J. M.
Cook, P. F. S.	Patterson, K. C. L.
Forshaw, M. G.	Macdonald, S.
Neal, B. J.	Tambling, G. E. J.
Ray, R. F.	Crane, W.

*** denotes teller**

(Senator Evans did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Bolkus did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the negative.

Senator ALLISON (Victoria) (3.31 p.m.)—The Democrats will withdraw amendments 92 to 95.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (3.31 p.m.)—by leave—I move:

(256) Schedule 3, page 511 (line 27), omit "*Telecommunications Act 1991*.", substitute "*Telecommunications Act 1991*; or".

(257) Schedule 3, page 511 (after line 27), at the end of clause 55, add:

(g) a repealed law of the Commonwealth.

(258) Schedule 3, page 511, at the end of the Schedule, add:

55A Existing buildings, structures and facilities—application of the common law

A rule of the common law that relates to trespass does not to apply to the continued existence of a building, structure or facility that is owned or operated by a carrier to the extent that the construction or alteration of

the building, structure or facility was or is authorised by:

(a) section 116 of the *Telecommunications Act 1991*; or

(b) Division 3 of Part 7 of the *Telecommunications Act 1991*; or

(c) a repealed law of the Commonwealth.

These are amendments to the provision that grandfathers existing facilities to put it beyond doubt that a facility owned or operated by a carrier that was installed under a previous Commonwealth law does not constitute common law trespass by remaining in place after the said law has been repealed or replaced. This arises out of the Senate majority report recommendation 4.15. The Democrats, I note, oppose grandfathering provisions.

Senator Schacht—What was the majority recommendation?

Senator ALSTON—It is essentially ensuring that you cannot be charged with common law trespass in relation to facilities owned and operated by a carrier after 1 July.

Senator SCHACHT (South Australia) (3.23 p.m.)—I will just double check. Perhaps your advisers can refresh my memory too, Minister. Was that a majority recommendation only; it was not unanimous? Can anyone recollect? I am not quite sure. That is recommendation 4.15 on the grandfathering.

Senator Alston—My note, for what it is worth, does not indicate that there was any opposition.

Senator SCHACHT—Yes, I think that is right. The opposition does not oppose it.

Amendments agreed to.

Senator ALLISON (Victoria) (3.33 p.m.)—In the light of the previous decisions, the Democrats will not proceed with amendment 96.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (3.33 p.m.)—In clause 3 of the principal bill, the government and the opposition have reached agreement on a new form of words, which would add a new object to the bill, in these terms: 'to promote the placement of lines underground of telecommunications cabling where it is economically desirable, technically feasible and has the support of the affected community'.

Senator Schacht—Is that the latest version? I think it is actually.

Senator ALSTON—Yes.

Senator Schacht—I just want to indicate to the minister that this is what was agreed from discussion between the government and the opposition.

Senator ALSTON—I move:

(1) Clause 3, page 3 (after line 28), at the end of subclause (2), add:

(h) to promote the placement of lines underground, taking into account economic and technical issues, where placing such lines underground is supported by the affected community.

Senator ALLISON (Victoria) (3.37 p.m.)—We will support this amendment. It is so heavily qualified as to not mean a great deal, but we do acknowledge that at least we have the words 'promote the placement of lines underground' and I hope that the government will act on that.

Senator SCHACHT (South Australia) (3.37 p.m.)—I think this is a successful conclusion to the discussion that started on Monday to put in (h) to promote the placement of lines underground. There are subsequent amendments to come about the working party and so on, but I think to have this in the objectives is a significant improvement. It is not the purest form of words that I or the opposition would have written. I am not sure it is the form of words the government would have wanted to put in but, on balance, this is a reasonable outcome. I think it does give an indication for the first time that the national position is to promote undergrounding, of course taking into account those other considerations.

Amendment agreed to.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (3.38 p.m.)—The next set of amendments I have deal with the ISDN and digital data capability amendments. These were government amendments 1, 28, 41 to 43 and 62. What I am seeking to do is withdraw the clauses in the draft and

replace them with new amendments with those numbers in accordance with AU244.

Senator Schacht—It goes for three pages, is that right?

Senator ALSTON—That's it.

The CHAIRMAN—Is leave granted to withdraw the original amendments?

Leave granted.

Amendments withdrawn.

Senator ALSTON—by leave—I move:

(1) Clause 3, page 3 (after line 3), after paragraph (a), insert:

(aa) to provide a framework under which a carriage service that provides digital data capability comparable to an ISDN channel is to become available to all people in Australia:

(i) by 1 January 2000; or

(ii) by another date having regard to the findings of the review into the timing of the availability of that service;

(28) Page 71 (after line 7), after clause 65, insert:

65A Conditions about Telstra's ISDN obligations

(1) The Minister must ensure that Telstra's carrier licence is subject to one or more conditions directed towards achieving:

(a) the result that, by 1 July 1997, Telstra is in a position to make available, to at least 93.4% of the Australian population, a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service; and

(b) the result that, by 31 December 1998, Telstra is in a position to make available, to at least 96% of the Australian population, a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service.

(2) For the purposes of this section, if:

(a) immediately before 1 July 1997, Telstra supplied a basic rate Integrated Services Digital Network (ISDN) service; and

(b) the service complied with any of the standards for ISDN services made by the European Telecommunications Standards Institute (ETSI);

the service is a ***designated basic rate ISDN service***.

(3) For the purposes of this section, the determination of the comparability of the digital data capability of a carriage service is to be based solely on a comparison of the data transmission speed available to an end-user of the service.

(4) This section does not, by implication, limit the application of section 63 to Telstra.

(41) Clause 104, page 100 (after line 23), after subclause (4), insert:

(4A) The ACA must monitor, and report each financial year to the Minister on, the progress made by carriers and carriage service providers towards making a carriage service that provides digital data capability comparable to an ISDN channel available to all people in Australia.

(42) Clause 104, page 100 (line 24), omit "or (4)", substitute ", (4) or (4A)".

(43) Clause 104, page 100 (lines 27 and 28), omit "or (4)", substitute ", (4) or (4A)".

(62) Clause 137, page 125 (after line 22), at the end of the clause, add:

(2) Before 30 September 1998, the Minister must cause to be conducted a review to determine whether a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service should be specified, on and after 31 December 1998, in regulations made for the purposes of subsection (1).

(3) The review is to deal with the question whether the benefits to the community resulting from so specifying that carriage service would outweigh the costs to the community from so specifying that carriage service.

(4) If:

(a) a carrier makes a submission to the review; and

(b) the submission includes a claim that the costs to the community resulting from so specifying that carriage service would outweigh the benefits to the community from so specifying that carriage service;

the review is to include an examination of whether there is sufficient evidence to substantiate the claim.

(5) For the purposes of this section, the determination of the comparability of the digital data capability of a carriage service is to be based solely on a comparison of the data transmission speed available to an end-user of the service.

(6) The Minister must cause to be prepared a report of the review.

(7) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

(8) In this section:

designated basic rate ISDN service has the same meaning as in section 65A.

I indicate that the 93.4 per cent figure and indeed the 96 per cent figures that we are now committed to refer to an ISDN comparable service being available within 90 days of request. The government has, as promised, reworked the amendments into a form so that these amendments all deal with making ISDN comparable digital data capability available and to cover four areas of legislation; namely, an objects condition, a licence condition, a monitoring and reporting requirement and a requirement to undertake a review with a view to making an appropriate ISDN comparable service part of the USO. The proposed object of the bill now is:

to provide a framework under which a carriage service that provides digital data capability comparable to an ISDN channel is to become available to all people in Australia:

(i) by 1 January 2000; or

(ii) by another date having regard to the findings of the review into the timing of the availability of that service;

This wording should address the concerns previously expressed about the day by which ISDN should be available. The licence requirements, the revised amendment 28, are essentially the same as the government's earlier amendment but important changes have been made to the target date by which Telstra is required to meet the 96 per cent availability target. It also requires the minister to ensure that Telstra's carrier licence is subject to one or more conditions directed towards achieving the result that Telstra is in a position to make available a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second to at least 93.4 per cent of the Australian population by 1 July 1997 and at least 96 per cent of the Australian population by 31 December 1998. These targets refer to ISDN comparable services being available within 90 days of request.

This brings the 96 per cent target forward by one year. A review will then be undertaken about the roll-out of ISDN services to the remaining four per cent of customers prior to 30 September 1998. That will consider the propriety of the 1 January 2000 target date and the best means of achieving it. The monitoring requirements closely reflect the wording of the proposed object provision. The ACA must monitor and report each financial year to the minister on progress made. The revised amendment 62 provides a firm statement on the government's commitment to dealing with the issue.

Senator SCHACHT (South Australia) (3.42 p.m.)—The opposition welcomes these amendments, which are a result of behind the scenes discussions over the last three days after we first raised this issue of how you guarantee all Australians having digital data capability by 1 January. Though we have had to make some compromise, so has the government and I think the process now is very transparent that if anyone tries to walk away and get away from meeting the date of 1 January in (i) of amendment (1) that has to come through the review process. That will be itself a debatable issue in the Senate because the report will be tabled by 30 September 1998 and regulations can be drawn up by December 1998. That is not exactly what the opposition wanted. We wanted an absolute date of 2000 but, in the circumstances, to get a compromise where the government makes a commitment this way I think is a very useful step forward.

I also note it is very useful having the ACA to monitor and report each financial year on the progress so each year senators or members of parliament can comment on that report when annual reports are tabled. I also note in what is amendment (62) clause (4) that the onus of proof is on the carrier to prove it is

not affordable. If they do so then the review is to include an examination of whether there is sufficient evidence to substantiate the claim. I think for a lot of us this puts the onus around the other way rather than accepting what Telstra or any carrier just bowls up to us and says is the truth. I think this is a very satisfactory outcome from all sides, certainly from the opposition, and we support it.

Amendments agreed to.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (3.44 p.m.)—Senator Harradine is not here, but he did ask about the likely target dates for Tasmania. I can inform the Senate that by June 1997 ETSI OnRamp on demand will achieve 71 per cent of customer penetration and by June 1997 OnRamp at the 90-day provisioning option will cover 96.4 per cent of the Tasmania population. They are both as at June 1997.

The CHAIRMAN—Senator Schacht, can I confirm that you are not going to move amendments Nos 1 to 7 on sheet 412?

Senator SCHACHT (South Australia) (3.45 p.m.)—That was the original sheet from Monday. Yes, I am withdrawing in favour of the amendment moved by the government and acknowledge that we are withdrawing it in that favour.

Progress reported.

ADJOURNMENT

The PRESIDENT—Order! It being 3.45 p.m., I propose the question:

That the Senate do now adjourn.

East Timor

Senator MacGIBBON (Queensland) (3.46 p.m.)—On Thursday, 16 January this year, the *Herald-Sun* gave sensational front page reporting to a totally inaccurate account of the death of five journalists at Balibo in East Timor in 1975. It was probably the most mendacious reporting I have seen in the Australian press. It was the worst sort of beat-up, calculated to promote further prejudice against Indonesia.

The relationship between Australia and Indonesia is of very great importance to this country. We are neighbours geographically and nothing will ever change that. We want to live in peace and harmony with our neighbours in the region. No two countries anywhere in the world start with more differences between them than Australia and Indonesia. We have differences ethnically, culturally, in religion and in government. Indonesia is an emerging democracy; Australia is an old and stable democracy. Australia is a united country; Indonesia has several thousand different groups and has difficulties with regions like Aceh, Kalimantan, Irian Jaya and Timor. Despite this and although we have had a few acrimonious times over the years, the relationship has matured enormously since I was first in Indonesia in 1962.

Indonesia itself has changed. Literacy levels have gone up dramatically and poverty levels have declined. Infrastructure and development of the nation has been at a great pace through the last decade or more. Importantly, there has been a very significant change in the field of human rights and Indonesia's respect for them. Australia does not encourage further Indonesian progress down this path and the advancement of human rights with articles like this one which appeared in the *Herald-Sun*.

It is particularly important through the next year or so, and in the run-up to the Indonesian elections, that there is accurate and responsible reporting of Indonesian affairs, not the scurrilous type of article, incorrect in nearly every detail. Since it was so much at variance with my recollection of the facts, I have researched the article carefully, including speaking to the Australian ambassador at the time and to other sources. Let me deal now with the article.

The headline of the article is 'The secret of an execution'. The secret referred to is the burial service of the five journalists. There never was any secret about that. In fact, 35 people—including representatives from the Australian, British and New Zealand embassies—attended the funeral service. Also, there were media present from the Australian Broadcasting Commission, Reuters and the Indonesian press. Then it says in the first sentence of the article:

This is the first picture of how five murdered Australian journalists were laid to rest, buried together in a shared pauper's grave.

The first picture claim is quite wrong and grossly inaccurate. The ABC actually televised the service in Jakarta in December 1975. It even re-ran file tape of the event in its 7 p.m. television bulletin on 16 January this year. How could it have re-run file tape if it had not been present?

Pictures appeared in the Indonesian press. The *Australian* printed pictures of the grave on 21 and 22 October 1995 and again on 13 September 1996. Where it says 'the five Australian journalists', the accurate point there is that there were five journalists employed by the Australia press. Only two of them were Australian, two of them were British and one was a New Zealander. They were not murdered; they were killed on the battlefield and that is an entirely different matter in different circumstances.

They were not buried in a pauper's grave. The grave was bought and paid for by the Australian embassy in the Christian section of the Kebayoran cemetery in Jakarta and has been maintained at taxpayers' expense ever since. There are four very serious mistakes all in the first sentence.

Furthermore, the assertion that 'the families were not told of the funeral until afterwards' is false. The consent of the families to the proposed service was obtained in advance through the Australian Department of Foreign Affairs, the British Foreign Office and the New Zealand Department of External Affairs. Otherwise, the three embassies could not have taken part in the service. Mrs Shackleton admitted that she gave consent for the service in an interview on the ABC on 16 January.

The assertion that 'yesterday Mr Woolcott', who was the ambassador, 'spoke publicly for the first time about his role in the burial' is quite untrue. Apart from speaking publicly at the service himself, he has responded to numerous questions from journalists over the last 20 years. The statement that 'successive Australian governments have refused to give details of the burial' is also false. I know of no detail or any instant where a government in Australia has tried to cover up the funeral service.

Furthermore, the statement misquotes the Sherman report as finding that 'they were probably killed by Indonesian soldiers'. It would not have been very difficult for the writer of this article to check the Sherman report and read it the way I did. He would have found out that what Mr Sherman said was that the journalists were probably killed:

. . . by members of a mixed attacking force of Indonesian soldiers and anti-Fretilin East Timorese . . . in the heat of battle while fighting was continuing to occur.

They were not murdered. So much for the accuracy of this article. Then in the editorial of the same paper we have a similar jingoistic approach to the subject. We have a repeat of the claim that they were murdered, which is a most inflammatory way of referring to their unfortunate death. The lack of scholarship in the editorial and the lack of respect for accuracy is exactly the same as in the lead story in the paper. Both of these reflect an appalling standard of journalism.

Articles like these only promote prejudice in the wider Australian community against Indonesia, an end result which is not constructive to either country. Finally, I note in the article that the source was 'Melbourne based activist Jim Aubery'. He is one of the anti-Indonesian lobby in this country.

Ethanol

Senator CHILDS (New South Wales) (3.53 p.m.)—I wish to raise a serious issue today on behalf of the employees of the integrated starch and gluten plant which produces the environmentally friendly alternative fuel ethanol near Nowra in the electorate of Gilmore. These people have, for too long, had their pleas unanswered. I appeal to the government to alter what is clearly a flawed budget decision—one that highlights the government's disdain for the environment and their contempt for this symbolic group of workers in regional Australia.

In the first budget of the Howard government a bounty given to producers of ethanol was savagely cut, even after the grandiose commitments given on the environment

during the election campaign. What we see now is the typical response from the Howard government—a body blow to regional enterprise, an enterprise that is a credit to the south coast of New South Wales. The coming May budget must reverse this decision.

It was in the late 1980s, when the threat of the greenhouse effect gripped Australia—and, indeed, the entire world—that we were forced to look for alternative energy and fuel sources. The ever increasing size of the hole in the ozone layer, the alarming incidence of skin cancer and the threat of global warming all posed serious dangers to our planet. We had to try to stop the massive environmental damage we were inflicting on the earth. We had to start looking for alternative energy and fuel sources. We finally came to realise that the overuse of fossil fuels, such as coal and oil, which are non-renewable resources, was causing great harm to the planet. The amount of carbon dioxide given off through the overuse of these energy sources was clearly one of the main contributors to this widespread environmental damage.

In 1990 I was chair of the Senate Standing Committee on Industry, Science and Technology, which examined ways to reduce the impact of the greenhouse effect. In the summary of our report *Rescue the future*, tabled in February 1991, the committee recognised Australia's role in greenhouse gas emissions. Yet, regardless of the greenhouse effect, action had to be taken to increase energy use efficiency, as this would result in resource and cost savings to the benefit of everyone.

Part of the longer term initiatives were to focus on alternative and renewable sources of energy which emit less greenhouse gases, particularly for transport. Road transport was responsible for almost one-quarter of carbon dioxide emissions. Through using lower carbon fuels, the quality of the air we breath will be greatly improved.

While the Labor government had already made the decision to move towards the elimination of chlorofluorocarbons in a time scale ahead of the Montreal targets, we knew that we had to start looking towards alternative lower carbon fuels. One of these fuels was ethanol. The former Labor government took up the challenge. By encouraging the industry to invest in new plants and equipment for production and new technologies for producing renewable fuel ethanol, we were able to make a positive step in encouraging industry and helping the environment.

In 1994 we implemented the Bounty (Fuel Ethanol) Bill. The purpose of the bill, as former minister David Beddall said, was to provide a strong incentive for the eventual development of a competitive, viable and ecologically sustainable ethanol transport fuel industry in Australia. Effectively we sought to encourage those companies already producing ethanol to increase the size of the market. It was further hoped that other producers would enter the market. Twenty-five million dollars was to be invested by our government in the scheme. Industry received 18c per litre produced. By building sales of fuel ethanol and introducing it into industry and transport as a blended alternative fuel, airborne lead emissions and carbon dioxide emissions would be reduced, saving our natural environment.

Later, in 1993, the Manildra Group opened a $23 million ethanol plant in Nowra on the New South Wales coast. The time and money invested in the ethanol plant indicates a commitment to local industry and the environment. Producers such as the Manildra Group invested about $35 million in total, with the government investing $4 million out of the allocated $25 million bounty pool.

However, the first budget of the Howard government undid all these measures. By severing the bounty for ethanol production, the strong incentive to keep on investing was taken away from the producers. Employees at the ethanol plant first contacted me in July last year to express their concerns at the slashing of the bounty. Even though strong representations were made to the Minister for the Environment (Senator Hill) on the bounty, the bounty was still lost.

While we would like to believe the government's claims that it is still in support of the development of ethanol as an environmentally preferred alternative fuel, it is very hard to accept. While we would also like to believe that this government is committed to halting

unemployment, we can clearly see that this is not the case. While the Australian environment will lose out over the cutting of the bounty, employees in the field, particularly employees in this regional area, will suffer also.

In the last few weeks I have been in contact with the Manildra Group. They have gravely informed me that probably five or six people from the Nowra plant may lose their jobs. I am also led to believe that CSR, the other ethanol producer, has already been forced to cut people from its work force. Of course, the opportunity for job creation has also disappeared.

The Manildra Group had managed to keep the ethanol production plant in Nowra operating at the same level as before. Yet had the bounty remained in place, 20 more people would now be employed. All contracts signed before the bounty cuts have not folded. However, they cannot keep going forever. Employees involved in all stages of production are waiting for changes to occur with great concern. Fifty people associated with building a new plant are waiting for work to proceed.

It is up to the government to rectify its mistakes through the next round of budget deliberations. If they perpetuate this error, they will show their true colours. They will prove to us all what a phoney government they really are. They are phoney in their concern for the environment. They are phoney in their concern for small business. Further, they are false in their intentions towards the workers of the nation, particularly workers in regional areas. Mostly importantly, the contempt of the Howard government towards regional Australia and small business will be exposed.

I appeal to the Minister for the Environment and the Minister for Resources and Energy (Senator Parer) to make representations on this. They must take up the cudgels in the processes of this budget. If they fail to do that they will fail Australia and the environment and resources industries. I appeal to them to make this a major issue. Although it is a small industry it is symbolic of all those things I have said. The onus is now on the government. May is the time when we will see just what colour this government is. It certainly does not look green and certainly does not look good for the people of Nowra.

Green Movement

Senator BROWN (Tasmania) (4.01 p.m.)—It is very appropriate, having heard that speech from Senator Childs, that I will speak about things green. Sunday, 23 March is the 25th anniversary of the establishment of the world's first Greens party. At an overflow meeting, a protest meeting against the imminent flooding of Lake Pedder, in the Hobart town hall on that date 25 years ago, a motion was put that a new political party should be established. On the floor of the Tasmanian House of Assembly there was total unanimity that the flooding of Lake Pedder should proceed.

Although there were growing public protests about the loss of one of the most gently beautiful places in the Tasmanian wilderness—and, indeed, on the face of the planet—the Labor and Liberal parties of the day were unanimous in turning their backs on that feeling. There was not one voice in the house of government in Tasmania to represent those people.

Out of that came a new political party. It was first mooted I understand by a couple of people talking with their feet on a rock in the central plateau of Tasmania. Amongst those who devised this idea was Dr Richard Jones, who became one of the early co-leaders of the United Tasmania Group, which was the first Greens party, and who was president through the early and middle 1970s.

The party failed to win a seat in the Tasmanian House of Assembly in the election in May 1972 by a few hundred votes. It contested subsequent House of Assembly and Senate elections, and in my first effort with the United Tasmanian Group in 1975, standing as No. 2 on the Senate ticket, state wide I was able to pick up 112 votes. I subsequently stood in eight elections for the Greens Tasmania, losing four and winning four. It is a great pleasure for me to be representing them in the Senate today. The Tasmanian

Greens group is a direct descendant of the United Tasmania Group.

But what a world of difference from 1972. In 1996, there are between 80 and 100 Greens parties around the world. The Greens hold the balance of power in the parliaments of Finland, Georgia and Italy. In recent years, the Greens have been elected as mayors in Rome, Dublin and at least four major cities in Brazil. In Rio de Janeiro the elected secretary to the department of environment is a Green and the department has a staff of 6,000 people.

There are some 14 Greens parties in Africa. Last year I had the terrific pleasure of meeting the new and vigorous Greens party of Taiwan whose first effort was to sail out into the impact zone where rocket tests were being tried out by the People's Republic of China at the time of the Taiwanese elections. It shows the grit and public response that the Greens can mount as against some of the older parties which are caught up in the business of talking rather than acting.

In Australia, the Greens now have a long record. We have the Australian Greens group, which works in close liaison with our friends the Greens (WA). Incidentally, the first parliamentarian to take the label of 'Greens' in this nation was Jo Vallentine from Western Australia. She was a major figure in the Senate in her time. She put up with a lot as the first Greens parliamentarian in the national arena and took on the title of Green MP in 1992.

It is interesting to look at where the word came from. It was not just Kermit saying that it is not easy being green. Long before he made that epic statement—if I may be light about it—

Senator Brownhill—The country cannot be green when it's in the red either!

Senator BROWN—Some consideration needs to be given to the triteness of that statement not just Kermit's. Petra Kelly the feisty, intelligent, indefatigable German Green came to Australia in the mid-1970s. She saw the green bans which the unions, not least Jack Mundy, were then imposing on untoward developments in Sydney at the behest of a whole range of citizens who were being ignored by parliaments.

Thank glory that, because of their action in the mid-1970s, such places as the Rocks, one of the most attractive parts of Sydney, still exist. She took back with her to Germany this idea of Greens' bans, or the terminology. As best we can track it down, that is where the word 'green' as applied to the emerging Greens in Europe came from.

Petra Kelly had worked with the Democrats in the United States, she had worked on Robert Kennedy's presidential campaign and she had worked with the Social Democrats in Germany. She came to the conclusion that so many of the rest of us have come to: that is, the old parties simply do not have the ability to meet the needs of the latter part of the 20th century and the 21st century, which we are about to enter, neither the environmental crisis of this age nor the social crisis coming out of a globalising community, which has a politics of economic fundamentalism almost in every corner of the world, almost in every established, older political party no matter where you look. She, with others, was a driving force in the rise of the Greens in Europe.

The first Green MP was elected in Belgium in 1979. Consequently, Greens have been elected in almost every country in Europe. For example, in recent elections in Sweden, 17 Greens were returned to the parliament and more than 500 Greens were elected at the local government level. It is interesting that, in 1995, 16 Greens were elected at the local government level in New South Wales, and it gave us terrific pleasure in the run-up to our anniversary just this last week to hear that Margaret Henry had been elected to the Deputy Lord Mayor's position in Newcastle—the first time we have had a Green elected to such a high post in local government.

There are Greens by name or by nature in local government throughout the states and territories of Australia. There are now 12 Greens in the parliaments, state and national, in Australia: the three Greens returned to the Western Australian upper house just before Christmas, the two Greens in the Legislative Assembly in the ACT, the one in the upper house in New South Wales, the two of us

herein the Senate and the four Greens in the balance of power in Tasmania led by the most colourful, articulate and far-sighted leader in the Tasmanian parliament, Christine Milne.

So we are looking forward to a great indoor pageant in Hobart on Sunday. We feel like letting our hair down. We do not stop enough to celebrate as there is so much on our plate, but we are really marking the evolution of a new global political force in politics in a world that greatly needs it. We are very happy about where we are at 25 years after those people in the Hobart Town Hall got together and said, 'We need something brighter, something with more long-term vision, something more committed to future generations and something more committed to a working relationship again between we five billion people and this one fragile, beautiful little planet that gives us life in this spectacular universe.'

Senate adjourned at 4.11 p.m.