

## JOINT SITTING OF THE LEGISLATIVE COUNCIL AND HOUSE OF ASSEMBLY

Friday 8 May 1987

The members of the Legislative Council and the House of Assembly met in the House of Assembly Chamber at 9.30 a.m.

### CHOICE OF A SENATOR

The Clerk announced that the joint sitting had been convened in accordance with sections 21 and 15 of the Commonwealth of Australia Constitution under which provisions both Houses had been advised as follows:

'I am enclosing a copy of a letter I have received notifying me, pursuant to the Provisions of Section 21 of the Commonwealth of Australia Constitution, that a vacancy has happened in the representation of the State of Tasmania, through the resignation of Senator the Honourable Donald James Grimes, which occurred on Thursday 2 April, 1987.

I enclose also a copy of a letter that I have sent to the Presiding Officer of the other House asking him to arrange with you for the filling of this vacancy.

Yours sincerely,

J. Plimsoll

GOVERNOR'

'His Excellency Sir James Plimsoll, A.C., C.B.E.,  
Governor of the State of Tasmania,  
Government House,  
HOBART TAS

Your Excellency,

Pursuant to the provisions of section 21 of the Commonwealth of Australia Constitution, I notify Your Excellency that a vacancy has happened in the representation of the State of Tasmania through the resignation of Senator the Honourable Donald James Grimes on 2 April 1987.

Yours faithfully,

Kerry W. Sibraa

PRESIDENT OF THE SENATE'

Mr BROADBY (Gordon) - I propose to the joint sitting for its Chairman the honourable member for Braddon, Mr Cornish.

Mr GRAY (Lyons - Premier) - I second the proposal.

There being no further nominations, Mr Cornish took the Chair as Chairman.

Mr CHAIRMAN - I wish to express my grateful thanks for the high honour the joint sitting has been pleased to confer on me and I invite the honourable President of the Legislative Council, Mr Broadby, to join me on the dais.

Are there any nominations to fill the position of the Honourable Donald James Grimes?

Mr NEIL BATT (Denison - Leader of the Opposition) - Mr Chairman, I propose -

That John Robert Devereux be chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Donald James Grimes.

Mr Devereux is eligible to be chosen to fill the vacancy in the Senate caused by the resignation of Senator the Honourable Donald James Grimes. His nomination is in accordance with section 15 of the Constitution of the Commonwealth of Australia. He is eligible to be a Senate candidate and is willing to hold the seat if chosen. In accordance with tradition, I do not propose to debate the matter.

Mr CHAIRMAN - Has the honourable Leader a letter from the person proposed?

Mr NEIL BATT - I have, Mr Chairman.

Mr CHAIRMAN - I ask that it be handed to the Clerk.

Is there a seconder for the proposal?

Mr FIELD (Braddon - Deputy Leader of the Opposition) - Mr Chairman, I have pleasure in seconding the nomination and I reserve my right to speak.

Mr CHAIRMAN - The question is that John Robert Devereux be chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Donald James Grimes.

Mr RAY GROOM (Denison - Minister for Forests) - We have before us only one nomination to fill the vacancy caused by the resignation of former Senator Don Grimes. Our duty and our responsibility is to consider carefully Mr Devereux's credentials and decide whether he is a suitable person to represent Tasmania in the Senate.

It has been suggested by some people that there is a convention which requires us to accept Mr Devereux's nomination without question, but section 15 of the Constitution clearly states that it is for the Parliament to choose the person to fill the vacancy and not the party. We can choose only a person who is a member of the same party as the retired senator - that is well recognised - but we are not bound to accept the nomination of the party concerned. The convention which evolved after 1949 - that the person chosen to fill a casual vacancy should be of the same party - was actually written into the Constitution in 1977. It is therefore no longer a convention; it is an express statutory provision set out in the Constitution itself.

There has never been a convention that the political party has the final say on who the new senator will be. If we accepted that principle we would be handing over the duty to choose to faceless officials of a political party organisation. It would surely be against all democratic principles to allow a party organisation to decide who will represent the people in Parliament, without the people directly or indirectly having their say. That is why we are meeting today: to exercise the right of choice which is given to us on behalf of the people under section 15 of the Constitution.

Much of the debate which has occurred in recent weeks has centred on this fundamental question as to whether a political party or the Parliament has the right finally to choose. Those who advocate that the Parliament has no say in the matter should carefully consider the danger inherent in handing over the choice to a political party.

In this instance we are discussing an Australian Labor Party nominee. The ALP is a nationally controlled organisation. Its rules provide that the national conference is the supreme governing authority, not the State executive or the State conference. I refer members of the joint sitting to Rule 5, parts b and c of the Rules of the Australian Labor Party set out in 'The Australian Labor Party's Platform, Resolution and Rules' of 1986 at page 282. I quote from those rules:

'b the National Conference shall be the supreme governing authority of the Party and its decisions shall be binding upon every member and every section of the Party.

c the National Executive shall be the chief administrative authority of the Party, subject only to the National Conference.'

The national conference and the national executive have the power to stand over the local organisation of a party within Tasmania and demand, according to its rules, that a particular individual shall be nominated to fill a Senate vacancy. It therefore follows that, if we concede that the party has the choice, we may be handing over the right to people who might live outside Tasmania and who may have no real concern for the interests of our State. But fortunately the words of section 15 are perfectly clear: we as members of Parliament have the responsibility and the duty to make the choice on behalf of Tasmanians.

It is clear that we should exercise our choice with great care. Of paramount importance are the best interests of the State of Tasmania. We are sitting in this place in the joint sitting as Tasmanians to make our choice for Tasmania. We should therefore choose someone who has Tasmania's interests at heart; someone who will stand up and fight for the State. We should not reject a nomination merely because that person is of another political persuasion or because that person holds views with which we may not agree. Section 15 would become unworkable if we decided that we would accept only a person who held the same views that we might hold. For section 15 to work the party must put forward someone who is likely to be acceptable to the Parliament, and the Parliament sitting together jointly must consider any nomination reasonably and fairly. Therefore it follows that there must exist exceptional and extraordinary reasons if the joint sitting is to reject the nomination put forward by a party.

The nomination of Mr Devereux is such a case. It is exceptional and it is extraordinary. There are no similarities, I suggest, between this nomination and previous nominations in Tasmania to fill Senate vacancies. On previous occasions there has been genuine support across party lines for the people nominated. On this occasion, not only are Mr Devereux's opponents vigorously opposed to his nomination but so are many people in his own political party. Many Labor people have said to me and to many of my colleagues, 'We don't want John Devereux'. Mr Devereux is probably the least acceptable person the Australian Labor Party could put forward at this time. Over recent months he has placed his own political fortunes above and beyond the interests of Tasmania and especially the workers of this State.

Members would be aware that only at midnight last night the Federal Government put into effect its long-awaited legislation to take control of over 280 000 hectares of Tasmanian State forest. That legislation is a blatant abuse of the external affairs power contained in section 51 of the Constitution. It strikes at the heart of Tasmania and seeks to grab large areas of Tasmanian land which both Houses of this Parliament - the Legislative Council and the House of Assembly - have controlled since 1857 on behalf of the people of Tasmania. That action threatens the jobs of thousands of Tasmanians and places directly at risk vital projects -

Mr LOWE - Point of order, Mr Chairman. I draw your attention to the question before the Chair and I suggest to you, Sir, that a discussion on Federal government policy on matters unrelated to the nomination before the Chair is quite improper under the rules that have been established for this sitting.

Mr GRAY - Mr Chairman, I wish to address you on the point of order. The minister is outlining his reasons for opposing the nomination of Mr John Devereux. I believe it is appropriate that he outline those and that he support his argument in the way he is doing it. He is developing his argument and I believe you should allow him to proceed, Sir.

Mr CHAIRMAN - I will not uphold the point of order at this time. I understand that the honourable minister is developing his argument and I will allow him to proceed.

Mr Lowe - We have the wrong Chairman.

Mr CHAIRMAN - Order. I ask the honourable Minister for Forests to resume his seat. I ask the honourable member for Buckingham, Mr Lowe, to withdraw his comments against the Chair.

Mr LOWE - I withdraw my comments, Mr Chairman.

Mr RAY GROOM - That action threatens the jobs of thousands of Tasmanians and places at risk major projects including the northern pulpmill and the expansion of the Boyer paper mill. It will do serious harm to our economy and threaten the future prospects of many Tasmanians, including young Tasmanians.

People of the State from all walks of life have stood side by side to oppose Mr Hawke and to defend the interests of the State. The State Government, the Leader of the Opposition, many members of the upper House, unions and industry have joined together in a joint effort to protect the State and the jobs of workers. Mr Hawke knows that he has been strongly opposed by most Tasmanians, including many people in his own party.

But one man has let Tasmania and Tasmanian workers down from a position of significant influence in order to please Mr Hawke and to advance his own political prospects. That person is Mr John Devereux, the man whom we are now asked to support. He has encouraged Mr Hawke, publicly and privately, to proceed with his legislation and has praised him for his actions. In taking that stand, Mr Devereux has betrayed Tasmania, Tasmanian workers and their families.

In the 'Examiner' of 20 December last year the Leader of the Opposition, Mr Batt, said Mr Devereux's -

'support for the Federal Government threat to prevent logging in National Estate areas was an act of disloyalty to Tasmanian workers.'

The Leader of the Parliamentary Labor Party in Tasmania was saying that Mr Devereux was guilty of disloyalty to Tasmanian workers. On this crucial issue at this critical time Mr Devereux is out of step with his own party and the people of Tasmania. It is now proposed that we should reward Mr Devereux for his disloyalty by choosing him to represent the State in the Senate.

Mr CHAIRMAN - Order. The honourable minister's time has expired.

Mr HODGMAN (Franklin - Minister for Construction) - I believe my ministerial colleague has adequately explained to the House the constitutional rights of voicing opposition to the nominated candidate. I do not intend to pursue that because I think it was quite adequately covered. But can I say that, although I have never spoken to John Devereux, his policies and views are well known to me and, I believe, every member of the lower House and members of another place.

When we approach the issue of John Devereux's nomination we ought to do so not as individual party members but as members of Parliament collectively. The views I am expressing now are the views I would have expressed if I were still the member for Huon in another place and they are the views I hold now as a member of the House of Assembly.

Clearly Parliament has a very important role to play. It should not play lip-service to a nominated person. It should be in a position to say 'yea' or 'nay' to that person, express its reasons and vote accordingly. I am particularly opposed to the nomination of John Devereux because I believe that person has flown in the face of the majority views of members of both Houses of Parliament and the public at large. I believe we have a mandate to fulfil on behalf of our own electors.

When we look at the way Parliament has responded to the voice of the people over the past six years we see that in another place the honourable member for Mersey, Mr Braid, proposed an amendment to the Gordon above Olga proposal, clearly because he and other members of another place believed the majority of the Tasmanian public wanted a change in direction on that power scheme. That move was put into effect and supported by a majority of members in another place.

The former Premier, Doug Lowe, established a consultative forum in this very Chamber and invited members of another place, members of the Opposition and the Government of the day to sit with other people in this Chamber and discuss the views of Tasmanians. If we had a repeat of that exercise today, I am quite certain the majority of Tasmanians would say, 'We don't want the name of John Devereux supported in this House'. They would not say, 'We do not want an Australian Labor Party candidate'. I have no objection to an ALP candidate being put forward - and I would cite, for instance, Julian Amos as a name which members could put forward because he would clearly express the views of the Opposition, of the Government, of the upper House and of the majority of people in this wonderful State of ours, in seeing it develop progressively.

When members of another place examine their roles in this debate and evaluate the findings of the joint House select committee on employment, on which the member for Hobart, Mr Petrusma, was an inspiring voice, I think they will see that one of its very clear recommendations was that the Tasmanian Government should maintain a full works program aimed at providing maximum public and private sector employment. Members on that committee were Mr Petrusma, Mr Fletcher, Mr Miller, Mr Page, Mr Smith and Mr Wriedt. There was a recommendation calling on the Government to address the unemployment problem. To support the name of John Devereux, with his views on forestry, flies right in the face of those recommendations.

So what will members who support John Devereux do, knowing they have also supported that inquiry? I remind the member for Hobart, Mr Petrusma, that he has a parliamentary commitment to this report and to put John Devereux into the Senate is to put a voice against his own recommendations on that committee's report.

Opposition members interjecting.

Mr HODGMAN - And the same goes for Mr Wriedt.

Opposition members interjecting.

Mr CHAIRMAN - Order.

Mr HODGMAN - As I said right from the word go, we ought to approach this matter as individual members of Parliament, not on a party basis. That is the way it should be approached. I am quite sure the other side of the House will learn a valuable lesson today on how independents work by the way they cast their votes on this matter.

Opposition members laughing.

Mr HODGMAN - How can we accept this man, when we look at the recommendations in that report, when we look at the mandate this Government has, when we look at the other side of the House which has supported the forestry industry and yet realise this man will be hell-bent in the Senate on destroying that industry?

It was known in union circles that Mr Devereux did not support the Electrona issue and yet his union is now involved in Electrona, which I think is the height of hypocrisy. His public views on the Gordon below Franklin scheme flew right in the face of the views of the majority of members of the upper House, this side of the Assembly and that side of the Assembly. Can we seriously consider that he is a man whom this Parliament should walk cap in hand to the ballot-box and support? I think it makes an absolute mockery of the parliamentary process. For my part, I will not be supporting the name 'John Devereux'.

I will support with no hesitation an ALP candidate who I believe shares the views of the majority of members of this Parliament and the majority of Tasmanians. I urge the Leader of the Opposition to put up Julian Amos' name.

Opposition members laughing.

Mr HODGMAN - Why not? He is a member of the ALP; he is a former minister for forests; he has been a member of this House; he is certainly ALP to the backbone -

Mr Baldock - He doesn't want the job, does he?

Mr HODGMAN - At least he shares the views of the Tasmanian people at large.

Mr White - That's why he lost his seat at the election.

Mr HODGMAN - To suggest that John Devereux has those views when the Leader himself has come out and castigated the name 'John Devereux' to me reeks of hypocrisy to the hilt. To expect us to go cap in hand on that proposal is preposterous.

Mr Patmore - Oh, a powerful speech!

Mr HODGMAN - Mr Chairman -

Mr White - The powerhouse of the Liberal Party.

Mr CHAIRMAN - Order.

Mr HODGMAN - I might say, quite surprisingly, that I would prefer the name 'Patmore' to be put forward rather than the name 'Devereux'. That is really establishing a list of priorities about what my views are -

Mr Bennett - You're testing them now.

Mr HODGMAN - I know it is going close to the bone. But I am sure that would be the case.

I simply conclude by saying one of the most traumatic experiences I think this Parliament has had in the past decade was the Gordon below Franklin debate. I remind members of another place of those days, with protests outside Parliament House, the Hydro workers and so on. Nearly every member since then has been re-elected, I am sure on the basis of his or her respective stand on the Gordon below Franklin proposal.

To support in this House today a man who was opposed to that scheme and to the principles of those very lengthy and learned debates would to me be an indictment on members. I urge them to recall that debate, to recall their presence here and to recall the fact that they were elected to vote in the best interests of Tasmanians. To support John Devereux is not in those best interests and I urge members to oppose his nomination.

Mr FIELD (Braddon - Deputy Leader of the Opposition) - As the Leader of the Opposition has said, we did not propose to debate this matter. We did not propose to bring the sordid political objectives of the Government into a joint sitting but the Government has chosen to do so and to continue this farce through to this point.

We hope that everybody involved in the Liberal Party is happy that the Legislative Councillors have been brought into this Chamber for this sort of debate. I hope they are very proud that they have done that. Everybody here knows that John Devereux went through the appropriate Labor Party process to be the authentic nomination of that political party to replace an authentically elected senator who also went through that process.

We also know that the Liberal Party went through a similar process not so long ago. This Parliament, as a matter of form and with no objection or attempt to change the rules, unanimously supported Jocelyn Newman as the authentically selected nominee of the Liberal Party.

Any one of us here who has studied the history of politics knows that this issue goes even beyond an individual. If members of the Liberal Party who get up here and say they object to Mr Devereux were honest, they would get up and object to every single person in the Labor Party so nominated because every single member of the Labor Party so nominated and elected to the Senate is caucused, by majority vote, to vote in a certain way in the Houses of Parliament. This has been the case since the Labor Party was formed. Therefore if members were consistent with their so-called principles, any member of the Labor Party who was nominated would be unacceptable to them.

This has nothing to do with principles or the acceptability of a particular individual. This has been a political operation from go to whoa and it disappoints me that the charade has been carried through to this point. I would have thought, because of the reaction of the community, that members of Parliament here - and particularly members of the Government - would have realised over the past few weeks that the farce had gone on long enough and I expected this sitting to be a formality. But the Government, probably because it is in so deep - I do not know its political motivation - has now proceeded for the first time to politicise a joint sitting of this Parliament.

It is no credit to the Government. If we talk about historical perspective, for the first time this will open up all the debates which were associated with 1975, when two replacements which were a perversion of the orderly replacement of senators brought about the blocking of supply and precipitated a crisis which could have caused bloodshed in Australia. It was very close to that. Let nobody in this Parliament draw away from the fact that this will set a precedent and create the environment for instability which led to 1975.

Make no mistake, the reason the Federal Liberals have made a decision to provide a pair until the replacement is through is clear. It is no accident that the constitutional change in 1977 was initiated by the Liberal Government because it saw the dangers and wanted to prevent a recurrence of 1975. We now have a government which has come in here and put in train the same series of events that was started by Lewis and continued by Bjelke-Petersen in 1975.

If we are honest we all know that if the vote is against the nominated person the Labor Party will not back down because it has made the authentic choice. If members here do not realise that they are not being realistic.

Sometimes I wonder how realistic many of our politicians are to have let it go this far, because we could have stopped it dead in its tracks right at the beginning if we had correctly interpreted the political motivations of the Government and we would not have gone through this process. To me, this is a day of sadness. I am in Parliament because of the events associated with 1975 and for the Government to pursue that sort of course distresses me. I urge members to stop the farce and to vote appropriately so that no precedent is set by this Parliament and we do not hang our heads in shame for the rest of our political careers.

Opposition members - Hear, hear.

Dr BROWN (Denison) - Mr Chairman, at the hands of the Government we have run very close to making this a Star Chamber process because the person who ought to be able to express an opinion is not here. If we reach the situation where the credentials of candidates for the high office of Senate representation of this State are to be questioned by the Government in the way they have been I think we would be doing the democratic and healthy thing to invite the candidates - and if in future there are a number of them, to invite them all - in here to enable them to reply to the charges being made.

However the Government has taken this course of action and it is up to this joint sitting to decide whether it supports that course of action. I, for one, do not. I believe the candidate who has been put forward has every bit of the credentials and capabilities of any other candidate put forward in the history of this Parliament to fill a Senate vacancy.

The Government talks about the democratic process being short in this case but I would point out to the Government that of the fifteen representatives of this State in the Federal Parliament there is only one at the moment, Dr Sanders, who represents the strongly held point of view in this State that the National Estate areas of this beautiful island of ours ought to be protected for purposes other than front-line logging at this time. That is one person out of fifteen yet the opinion polls last December showed that more than 80 per cent of Tasmanians want the National Estate protected if it can be done and that is what the Federal inquiry is about.

Following Federal intervention, the worst of the opinion polls showed that more than a third of Tasmanians support Federal intervention for the protection of the National Estate and a stay of logging for twelve months. On that basis, if we are looking for democratic representation, there ought to be at least five representatives from Tasmania supporting that point of view in Canberra but we have one, and the Government is complaining about there being another.

If the Government were honest about democratic principles and concerned to see that the Tasmanian point of view were adequately and fairly represented in Canberra it would welcome Mr Devereux's nomination and particularly his point of view on the logging issue because it would add to an under-represented point of view in this State. It is a healthy thing for democracy that he has been nominated and the only pity of it is that when he goes to Canberra he will presumably be caucused to vote one way or another as outlined by the Government, because I am all in favour of people being able to speak their minds and represent their electorates as they see fit, not as their party dictates to them.

It surprises me to hear the minister saying that there ought to be another person put forward and naming a past minister for forests, Dr Julian Amos, who lost his seat in an election at the hands of the electorate in Tasmania. Yet here we have a government minister suggesting that this person is fit to go to Canberra. Had he been nominated by the Labor Party he would have my support, but here we have the Government saying that somebody who has failed to win popular support in an election ought to go to Canberra. It has a mixed-up approach which is inconsistent and insupportable, and which follows no logic because it is political. It was put forward for political point-scoring and ultimately it has done this State no good.

I am glad there is the joint sitting today because it will put an end to the process which, in the eyes of the country as a whole, has sold Tasmania down the river. It has been an unenviable political exercise for this State to be involved in. The Government has done the State no good. I am pleased it does not have the ascendancy in this Parliament when we join together to vote. I believe the Parliament as a whole can act more honourably than the Government, which has the majority in the House of Assembly alone, has been doing to date.



Mr RUNDLE (Braddon) - Mr Chairman, we are gathered here today as members of both Houses of the Tasmanian Parliament to do what section 15 of the Constitution had always intended we should do.

The proposition that has been put by the Deputy Leader seems to infer that today there should be 50 or 52 political neuters gathered here simply to rubber-stamp a name that is put forward by a particular political party. I believe it is worth reading section 15 of the Constitution again because it is the crux of where we are at present with the evolution of rules for the selection of a senator by both Houses. It says:

'If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen, sitting and voting together, or, if there is only one House of that Parliament, that House, shall choose a person to hold the place until the expiration of the term.'

It is a fundamental situation; it is a fundamental question that we gather here this morning to address. I want to make it absolutely clear to the other members of both Houses sitting here today that I regard my role in this exercise not as a rubber stamp for any political party but as a representative of some six thousand people who voted me into this House about fourteen months ago.

The Deputy Leader of the Opposition said that the electorate is dissatisfied with the Government's performance on this issue. Obviously he has not been moving around the areas of Braddon as I do. Of any issue I have been confronted with in my short time here I have had a great deal of representation from people in Braddon telling me, in no uncertain terms, that I should not endorse the name 'Devereux' at this sitting. Many of those people are trade unionists, not traditional Liberal voters by any means. The majority of them are Labor people who feel very strongly on this issue.

I have not been impressed by arguments I have heard from time to time that because of a certain manner in which senators have been chosen in the past - because that has always been the way - we should have no rights to readdress that and decide it is inappropriate. If one took that argument to its logical conclusion there would never be legislation before this House; we would never change the statutes of the State. I believe the argument lacks substance; it is unconvincing.

I support the view that what both Houses of Parliament are doing today will be a landmark in Australian constitutional history. I believe the set of rules which has been produced by the joint select committee may be adopted by other States. I believe it is fair and reasonable that all members of the Tasmanian Parliament ought to have the right to say whether they approve of a particular nomination. If we take the arguments of the Opposition into account it follows that, whatever name is presented to this joint sitting, we should stand by mutely and accept it. That is not a viable or tenable proposition at all.

One of the reasons I will be voting against the nomination of Mr Devereux this morning is that I see him as a person who perhaps will place in jeopardy one of the most important projects ever to be proposed for the area of east Braddon - the billion dollar pulp factory at Wesley Vale. I was at a meeting only two or three weeks ago with the Chairman of North Broken Hill Holdings Ltd, Mr Peter Wade, and I put to him directly the question of whether the Federal Government's new logging moratorium would have any effect on this billion dollar investment. He said, having just returned from a visit to Japan, 'Of course it will. The Japanese believed we were a politically stable nation but now they are not so sure and this proposed Federal legislation will certainly cause them to have second thoughts about this project'.

Mr Wade went on to say that, during its three or four-year construction phase, the billion dollar pulpmill would employ two thousand people; it is one of the largest industrial projects ever to come to this part of Tasmania. That is being jeopardised by the attitudes of this person who, on going to Canberra, will support the Hawke line and will perhaps jeopardise this major project.

In addition we are being asked to support a man whose attitudes support what happened at 12.01 a.m. today. Ironically, as we sit here - and I doubt if the Tasmanian population at large has absorbed this fact - with the Federal legislation now taking effect we see the possibility of three thousand Tasmanians in the next twelve months being put out of the work force and onto the dole. This is at a time when we have seen a dramatic improvement in employment. Only yesterday the latest figures showed that Tasmania had achieved a 1 per cent drop in unemployment. One can imagine that in six months' time, after the Devereux's of this world have put three thousand Tasmanians out of work, we will see the hypocrisy of the other side when it criticises the Government for the increased unemployment in the State.

I come here today as a member of Parliament to vote. I intend opposing the nomination of John Devereux, and I stated that publicly some six weeks ago. I appeal to other members of Parliament who come from the particular region of Tasmania from which I come to consider very seriously their position in the Parliament this morning and to think carefully about voting for an anti-Tasmanian person who will support the federalist and centralist ideas of the Hawke Government and who is on record as having supported centralism, with scant regard to the State.

I believe the track record of Mr Devereux is not an enviable one. I do not believe it has ever been the intention of this Government - it has never been stated and it has never even been thought about - that there should not be a nomination from the Australian Labor Party to fill the position in Canberra, but we ought to have some choice in the matter.

I place it firmly on the record that I will be opposing this nomination. I have no problems at all about supporting an ALP nomination to go to Canberra but it will not be Mr Devereux.

Dr BATES (Franklin) - We have just heard a perfect exposition from the member for Braddon, and indeed from the ministers before him, of what I call the 'penguin principle' - that everything in life is black and white; that one is either for Mr Devereux or against him; for the Government or against; one either hates the greenies or loves them. That is the problem with this Government: there is no room for rational debate and argument which does not immediately polarise people into a for-or-against view. No wonder we are the laughing-stock of the Australian mainland when it comes down to that sort of attitude.

The Minister for the Environment stood up and said that, although he had never met Mr Devereux or talked to him, he did not regard him as a suitable person. There is a great deal of merit in the member for Denison's view that Mr Devereux himself ought to be able to answer the charges which have been levelled against him by people who have never even talked to him.

All that is known of Mr Devereux by most of us is his particular stand about the logging inquiry. On that basis alone the Liberal Government - and maybe others in this Chamber, unfortunately - has decided upon its point of view.

During the previous Parliament I did not hear the Liberal Government debate or want to debate the suitability of Mr Haros or Mr Walker to continue to hold their seats in the Parliament after they had been convicted of criminal offences in the Supreme Court of Tasmania. No, that was a different issue. Mr Devereux has not been convicted of criminal offences, he is not insane and, as far as I am concerned, he is therefore a suitable person to be appointed to the Senate. The fact is that he has been appointed by the legitimate and democratic processes of the Labor Party and I believe that is all we need to know.

The Minister for Forests raised section 15 of the Constitution. We know that the Constitution says the Parliament is 'to choose' but that, I contend, is a mere formality. The minister is wrong when he says the convention has disappeared. He wants to go back to 'Dicey's Constitutional Law' to find out more about it because conventions do not simply disappear when they become embodied -

- Mr Ray Groom - Who did you say was convicted in the Supreme Court?

Dr BATES - Mr Walker and Mr Haros.

Mr Ray Groom - When was Mr Walker convicted?

Dr BATES - Mr Walker was convicted of tax evasion.

Mr CHAIRMAN - Order.

Mr Gray - You said a 'criminal offence'.

Mr Ray Groom - Convicted of tax evasion?

Dr BATES - Yes.

As I said, the words of section 15 are a formality. They are there to ensure that an air of formality is given to the appointment of a senator. It is the same formality as that of having the Governor or the Crown approve of legislation which goes through this Parliament. The Governor is effectively a rubber stamp for legislation going through this Parliament, even though in theory he is entitled to refuse assent to that legislation. To my knowledge the Crown has never refused assent to the legislation of any parliament throughout the Commonwealth since Queen Anne did so in 1707. That is a mere formality. The formality of Parliament's appointing the new senator is also a formality which convention dictates is not refused by the House once the party has put up the nomination in proper form.

The convention of which the minister spoke is embodied in the legislation which made the amendments to the Constitution. It can survive the legislative embodiment of the spirit the convention was designed to foster, and if the legislation is ever repealed the convention can return.

I said last night in this Chamber that there may very well be merit in what the Minister for Forests and other members of the Government say about the procedures for nominating Senate candidates for the future, but I do not believe it is appropriate to attempt to change the rules for nominations at this joint sitting. I believe that we have to be fair and just and treat this nomination in the same way as Senator Newman's was treated. If there is something wrong with the system by all means have a select committee; by all means try to influence the Federal Government to change the Constitution to put it right. But to come into this place and say that Mr Devereux is not suitable because the Minister for the Environment has read about his stand on the logging issue in the newspapers is simply a farce, quite frankly.

I ask the Government what would happen if Senator Sanders had resigned and another Democrat candidate had been up for nomination. All Democrat candidates support the logging inquiry. The Government would have had no choice but to appoint a Democrat candidate who supported the logging inquiry. I do not believe it makes any difference that there is a Labor Party candidate who supports the logging inquiry. Whether that is a majority or a minority point of view in this State does not matter. What the Minister for the Environment effectively said was that what he regards as a minority view is not entitled to representation in the Senate. That is what he said and that is what the Government has been saying.

We should not underestimate the public of Tasmania, no matter for which party they vote. I think they can see that there is more to this issue than a simple matter of politics. I hope this joint sitting puts an end to the nonsense we have all had to go through over the past few months so that the Premier can score political points off Canberra and the greenies.

Mr ROBSON (Bass) - Mr Chairman, I want to put some points of view that have not yet been expressed. The whole thing here today is a party farce.

Dr Grimes is the person who caused all this. I believe that he has a contract with the people. They elected him for six years and I believe he has an obligation to fulfil that contract. For him to leave that party to take an ambassador's job is against the spirit -

Mr Patmore - What about Peter Rae?

Opposition members laughing.

Mr ROBSON - I do not care. Members can give me a whole lot of examples but those people elected him to do a job and unless he is sick or has some really good reason for getting out of that Parliament I believe that it is not the correct thing to do.

I am one of those people who believe that the parties have too much influence - undue influence - in the Senate. I believe it is wrong. The Senate is a States' House and it should be so, and I believe it is terrible the way they go about using their influence.

Mr CHAIRMAN - Order. I do not want to prevent the honourable member from developing his argument, but I remind him that the question before the Chair is that John Robert Devereux be chosen to hold the place in the Senate rendered vacant by the resignation of the Honourable Donald James Grimes. I ask that the honourable member be relevant to that question.

Mr ROBSON - Thank you, Mr Chairman, but I am developing my speech to show that I disagree with the way he has been chosen. I believe the parties themselves exercise too much influence in the way he has been chosen. I believe the people of Tasmania should be more involved in this.

For instance, take the Senate system itself. How many people here would like to be elected to the Senate, the House of Assembly or the Legislative Council in the way people are elected to the Senate? The voters simply tick a box. It has nothing to do with people; it is purely party and I disagree with that.

Why can the Senate not use, as we do here in the House of Assembly, the Hare-Clark system so that when a senator retires, resigns, dies or whatever, the replacement senator is chosen on the results of the previous election? That would save this Government and the people of Tasmania at least half a million dollars and we would not have had to pay out all this money for this joint sitting and all the other arguments over the rules beforehand. I believe if a system such as that had been chosen we would not be in this position today.

Do we really think the Senate system represents the people of Tasmania and the State of Tasmania when I can cite an example such as Mr Aylett? He used to live on the Gold Coast but would come here for his election. I could talk about Mr Aulich who lost his seat in the State House and went straight into the Senate, or about Mrs Hearn - three hundred people voted for her but at the joint sitting she went through like a rubber stamp. I believe that shows undue influence, and I think the parties are wrong in keeping up this undue influence.

Let us talk about the Senate itself, where Mr Devereux may or may not go. It is supposed to be a House of review. How can it be a House of review when it is dominated by parties and when ministers sit in the Senate? When a minister comes from the Senate he goes into the Government and becomes part of the governing party. How can that Senate be a House of review, I ask you?

Would the Legislative Councillors here today like to think the parties are telling them how to vote? I do not. I am a free spirit in that way and I have always spoken up against party domination. I believe parties are good in their place. I believe there should be parties in the House of Assembly because then there is a governing party and it stops instability. I believe in parties in the House of Representatives too, but I do not believe in parties in the Senate and I do not believe in them in the Legislative Council either. I believe they should be out of it. I am against any type of party domination and I for one am against the way the parties have been pushing us as independent souls in this House.

I will oppose the nomination mainly for that reason.

Mr WRIEDT (Franklin) - I would like to put the thought to all members assembled here that the overriding consideration is that we are part of a historical process of the parliamentary system. That should be uppermost in our minds this morning. It should not be a question of party politics.

As a member of the lower House, I am sorely tempted to rebut some of the things which have been said here this morning but I will resist the temptation - mainly because I am under orders from my Leader to do so - and I will confine my remarks to what I believe is the issue before the joint sitting this morning.

Mr Wilson - I'd rather you speak your mind.

Mr WRIEDT - I will not be tempted by a member of either House of this Parliament, but I wish to make the very important point that the parliamentary system is a fragile one. It has been built up over literally centuries and if anyone has taken the trouble to read the history of our system he will realise the agonising process through which successive generations have gone in order to reach the stage we are at now, and we know it is not a perfect system even in 1987.

We also know that history is replete with examples of the parliamentary system being interfered with, especially in the twentieth century. It may sound rather obtuse to be talking about it in this context here in Hobart, Tasmania, in 1987 but it is not, because we are part of it. Every time something happens and we have a dispute about procedures in this Parliament, we go to the relevant history books - Odgers, May and so on - and look at what happened back in 1950, 1920, 1880 or 1840.

We go back to find out what those parliaments did as a guide to what we should do. In the year 2050, when we have all had our day, someone will look back at what happened in Tasmania in 1987 in the joint sitting over the Devereux matter. That is important because we are writing part of history and we should see this decision only in that context and all this nonsense about Mr Devereux and Mrs Newman - or Mr Smith or Mrs Jones or somebody else - is utterly irrelevant and should be put right out of our minds.

I have my views about the individuals - everyone has his own views about them - but we must ensure that we do not allow the basic idea to be lost because of the personalities. That is the important issue and I put it to you, Mr Chairman, that here today we are witnessing an opportunity for this joint sitting to uphold those very principles and to put those things uppermost in our minds. There should be no opportunity for any one of us to allow his personal views to prostitute the bigger issue which concerns us here today.

I do not think a great deal more can be said about it. Every one of us knows what the parliamentary system is about and we all know how important it is. How would we be if we were living in one of those countries which does not have a parliamentary system? We see the terrible abuses that go on where the people who make the decisions are not elected by the people as every one of us here is elected.

People - human beings - have put us here but they cannot come into this Chamber and get up and tell the world what ought to be done; they put us here for that purpose, not to scratch our own backs. They put us here to ensure that this forum is the people's forum, not a cliché. The more one reads history, the more one sees of the political process and the longer we live by it day to day, the more we realise the importance of preserving and protecting it.

I suggest that should be the first consideration in the minds of every member and I implore all members here today to think of it in those terms and those terms only.

Mr GRAY (Lyons - Premier) - This is a very important and momentous meeting of both Houses of Parliament because I believe this meeting will establish very clearly that it is the Parliament, meeting together in a joint sitting, which has the right to choose a replacement for former Senator Don Grimes.

Throughout this debate the Government - and I myself particularly - has maintained that there are two major principles involved: firstly, that the Constitution must be upheld; and, secondly, that members of Parliament, sitting together at a joint sitting have the right to choose a replacement senator and to express their views about the suitability of the nominations that are put forward.

There has been a tendency on the part of a number of prominent people throughout Australia, a number of representatives of political parties and in fact a number of the speakers here today, to claim that there was a tradition which required the Parliament of this State or the Parliament of any other State simply to rubber-stamp the nomination put forward by a political party.

Mr Chairman, I put it to you that, if that were what was intended, the referendum question of 1977 would not have been worded in the way that it was.

We must remember that section 15 of the Constitution says:

'If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen, sitting and voting together, or, if there is only one House of that Parliament, that House, shall choose a person to hold the place until the expiration of the term.'

That must be foremost in our minds and it is vital, Mr Chairman and members, that this principle be maintained. I am confident that, by the decision of both Houses yesterday to support the rules put forward by the joint select committee, it has been achieved. We have firmly established, beyond doubt, that this Parliament has the right to make that choice and we must never lose that right. We must never give that right away to political parties or to anyone else, no matter which political party it be - whether it be the Labor Party, the Liberal Party, the Democrats or any other political party. It is the right of this Parliament and its members to choose a replacement senator. I think members are to be congratulated on agreeing to the rules put forward yesterday.

I have made my position clear as far as the nomination of Mr Devereux is concerned. I will exercise my right as a member of this Parliament to reject Mr Devereux's nomination personally. I have made it clear to my colleagues that they may have a free vote; that as members of this Parliament they have the right to determine whether they support or do not support the nomination which has been put forward. There will be no caucusing of members on this side of the House; it is their right to vote as they choose.

I have made the decision to oppose Mr Devereux's nomination because in the present circumstances I cannot, as Premier of this State, support the nomination of a person who would support the policies of the Hawke Labor Government toward Tasmania. If I did so I believe I would be abdicating my responsibility to Tasmanians. I believe Tasmania has probably never faced a greater threat to its independence and its economic viability than it faces right now.

In just four years since the Hawke Government came to office, we have had the stopping of the Gordon below Franklin power scheme against the wishes of the vast majority of Tasmanians. We had a referendum in this State which supported that power scheme's development; we had an election at which the parties campaigned vigorously on that question; we had, I believe, at least 70 per cent support for that power scheme and yet the Hawke Government used the external affairs power to bypass the Constitution of Australia, to override the power of this Parliament to make its own decisions about what power scheme should proceed.

We have had savage cutbacks to Tasmania's funding over the past four years. Already we have lost \$160 million a year - \$355 per man, woman and child in this State - as a result of the Hawke Labor Government's antipathy to Tasmanians which I believe emanated from the rejection of the Labor Party in the Federal election of 1983.

We now have interference in the right of this Parliament and Tasmania to manage its own State forests in the way it believes they ought to be managed - a way which I believe is responsible and maintains employment for over twenty thousand Tasmanians. As from today, as the Minister for Forests has pointed out, legislation - albeit legislation I do not believe to be constitutional - will exist which will threaten the livelihoods of forest workers, mill workers and pulp workers throughout this State. It has been estimated by the Treasury of this State that this decision could put three thousand Tasmanians out of jobs - they are not my figures; they are the Treasury's figures.

We have also heard that the decision of the Hawke Government on this matter has put in jeopardy probably the biggest single investment this State would ever have seen, an investment which would have taken place in the electorate of the member for Meander, Mr Hope, and which would create two thousand jobs for Tasmanians.

Mr HOPE - Point of order, Mr Chairman. Sir, I rise on a point of order in relation to the new rules set down for today by the joint House select committee. Rule 1 says:

'The purpose of the Joint Sitting shall be to choose a person to hold the vacant place in the Senate caused by the resignation of Senator the Honourable Donald James Grimes pursuant to Section 15 of the Constitution of the Commonwealth of Australia, and no other matter shall be considered at the Joint Sitting.'

Mr Chairman, I consider that other matters are being considered at this joint sitting this morning.

Opposition members - Hear, hear.

Mr GRAY - On the point of order, Mr Chairman, I am setting out the reasons for my opposition to the nomination of Mr John Devereux.

Government members - Hear, hear.

Mr GRAY - It is important that those reasons be understood by both members of this joint sitting and members of the public. I believe I am developing that argument and I should be allowed to proceed.

Mr CHAIRMAN - I will not uphold the point of order because I understand each member should have the opportunity to develop an argument and state why he supports or opposes the nomination of Mr Devereux.

Mr GRAY - In a matter of a few days we face the Premiers' Conference at which already threats are being made that Tasmania's funding could be further reduced by \$100 million. That is happening because of the antipathy of the Hawke Government towards Tasmania and I believe Mr Devereux's nomination would be supportive of those policies. Already Mr Devereux has opposed the Gordon below Franklin power scheme and the continued logging in National Estate areas. As Premier of this State I cannot support any person, Liberal or Labor, who would put Tasmanians out of work.

Mr NEIL BATT (Denison - Leader of the Opposition) - I guess I hope for three things from today. One is that John Devereux, by a resolution of this joint sitting, will be elected as a senator from Tasmania but the next two things I hope for are perhaps more significant.

I hope that, by the decision of this joint sitting today, we will never again in Tasmania have anybody who will stand up and try to pervert the structure of the Constitution which is the basis of our whole operation within this State. I also hope that the Premier who perpetrated this matter, and those who supinely supported him, will - at the conclusion of these activities - feel a very deep sense of shame.

Mr Gray - You'll be the one to feel a deep sense of shame.

Mr NEIL BATT - Let me deal briefly with a few facts. The first fact is that I have here a document prepared by Andrew Tilt, the Premier's adviser, which he sent to the Premier - and I can make it freely available to all members of Parliament. It sets out what this whole matter was about.

On this occasion the Premier is totally without sincerity because what was planned within the structure of the Liberal Party machine was an opportunity to take a political advantage. How it should be done and what should be said is set out here - at the risk of damaging the Constitution of Australia, our community perception of the decency of members of Parliament and the standing of Tasmania in the eyes of every other State - in this document.

Mr Gray - If you're basing your whole argument on that document it's a very weak case you have.

Mr NEIL BATT - And this document is acknowledged, by the interjection, to be the basis of this whole rather shoddy political exercise.

I do not mind the Government's seeking a political advantage from time to time. But I repeat what I said last night: I am a member of the Labor Party; I will seek to do my job by the Labor Party and I will seek to gain political advantage, but may I never damage the institution of the House of Assembly, of the Legislative Council, of the Parliament or of the Constitution of Australia merely for a political advantage.

Mr Gray - You threatened a couple of members of the Legislative Council!

Government members interjecting.

Mr CHAIRMAN - Order.

Mr NEIL BATT - Therefore let us be sure about one fact: there is no sincerity. I will grant the Premier's sincerity on other matters, but on this matter the evidence is here that this is a cheap, insincere and shoddy political trick.

Let me come to the matter of Mr Devereux. It is said on the Liberal Party's side, 'Oh yes, we would normally go along with a Labor Party person; we would normally go along with the Constitution both in its precedent and its present wording, but this is an exceptional circumstance'. Let us examine this. Whenever a politician says it is an exceptional circumstance, one should ask himself, 'How do we measure that?' - because the exceptional circumstance is created by the whim and the prejudice of the man who makes the statement. There is no way in which one can measure exceptional circumstances and, therefore, every time we want to say there is an exceptional circumstance, there will be. That is the danger and that is what we are facing today.

Is Mr Devereux an exceptional circumstance? Bearing in mind the danger in using that very term, let me address the point. Let me remind members that on 11 February 1987 the Tasmanian branch of the ALP, according to its own rules, placed an advertisement in the three daily newspapers - the 'Mercury', the 'Examiner' and the 'Advocate' - calling



for nominations from party members to fill an expected casual vacancy in the Senate. At the close of nominations on 18 February 1987 only one nomination had been received, and that was of John Devereux. Will any member here say that every member of the Labor Party throughout Tasmania did not have the opportunity, if he or she so wished, to apply on that occasion?

Mr Gray - They were told not to nominate.

Mr NEIL BATT - The reason they did not apply was that there had been a democratic process whereby -

Mr Ray Groom - They had no hope.

Dr Madill - You said that.

Mr Gray - You are destroying your own argument now.

Mr NEIL BATT - I must be making some effective points, otherwise there would not be so many interjections.

Every person in the Labor Party had previously had, and had then, an opportunity for nominating for that Senate vacancy. The procedures of the Labor Party, which is a very democratic organisation, were followed and today we have that selection by the Labor Party.

It is said that the members of the Liberal Party do not happen to like Mr Devereux's views.

Mr Gray - No.

Mr NEIL BATT - Which nominee of the Labor Party would be acceptable to the Premier?

Mr Gray - I can think of quite a few.

Mr NEIL BATT - Which nominee of the Democrats, which replacement for an Independent would be acceptable? What the Premier of this State is saying is that he is never going to be a party to having anybody in the Senate who does not wholly represent his position.

Mr Ray Groom - That's nonsense.

Government members interjecting.

Mr NEIL BATT - In other words, he denies by that statement the very essence of our democracy. We need to defend - because it is the essence of democracy - the right of people who hold opposite opinions to be in the Parliament. In the Premier's ideal world no person who holds a different opinion is entitled to be part of the democratic process. That would remove from this Parliament several members of the Labor Party, certainly the two Independents, and in the Federal Parliament many members, particularly all members of the Labor Party, would be rejected by him. The danger of that is quite clear. Down that track lies a denial of democracy and the raising of the spectre of a one-party State.

Mr Devereux is an entirely appropriate person to be a senator for Tasmania. He has been the President of the Tasmanian Labor Party for a number of years. He is the national president of one of our great trade unions and the officer-holder of one of the State's trade unions. He has very strong views - he is entitled to hold them and he holds them sincerely - which happen to be different from those of the Premier. I hold different views from the Premier. I regard many of his actions to be detrimental to the State of Tasmania, but I defend his right to be in the Parliament and I defend his right to express those views in the Parliament, even though I disagree with him, and that is the essence of the question.

To vote against Mr Devereux would be to pervert the system which is the essence of the structure of our democracy. To agree with the views of the Liberal Party Leader in this State would be to say that no member of the Labor Party would ever be allowed to fill a vacant position in the Senate, nor would any member of the Democrats or any Independent who did not agree with the views of that particular political figure at any time at all.

Mr CHAIRMAN - Order. The honourable Leader's time has expired. The question is -

That John Robert Devereux be chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Donald James Grimes.

Division called.

Mr CHAIRMAN - Before the joint sitting divides, I wish to explain my position, as Chairman, and that of the honourable President. Although we have a vote under the rules that have been agreed to by both Houses, we will not be leaving our chairs. We will hand our votes to the tellers to be recorded.

The joint sitting divided -

AYES 26	NOES 26
Mr Baldock	Mr Archer
Dr Bates	Mr Beattie (Teller)
Mr Charles Batt	Mr Bennett
Mr Neil Batt	Mr Beswick
Mrs Bladel	Mr Bonde
Dr Brown	Mr Harry Braid
Mr Chellis	Mr Ian Braid
Mr Field	Mr Broadby
Mr Ginn	Mr Coates
Mr Hiscutt	Mr Cornish
Mr Holgate	Mr Davis
Mr Hope	Mr Evers
Mrs Jackson	Mr Fletcher
Mrs James	Mr Gray
Mr Llewellyn	Mr Ray Groom
Mr Lowe	Mr Roger Groom
Mr Meyer	Mr Hodgman
Mr Patmore	Mr McKay
Mr Peart	Dr Madill
Mr Petrusma	Mr Mainwaring
Mr Polley	Mr Page
Mr Weldon	Mr Rae
Mr White	Mr Robson
Mr Wilson	Mr Rundle
Mr Wing (Teller)	Mr Shaw
Mr Wriedt	Mr Stopp

Mr CHAIRMAN - Rule 11 of the rules adopted for this joint sitting states:

'... if the votes are equal, the Question shall be resolved in the Negative.'

The 'Noes' therefore have it.

Proposal so negatived.

Members interjecting.

Mr CHAIRMAN - Order.

Mr Coates - Mr Chairman -

Mr CHAIRMAN - Order. I ask all honourable members to resume their seats. Are there any further nominations?

Mr Neil Batt - Mr Chairman -

Mr CHAIRMAN - The honourable member for Tamar -

Mr Neil Batt - I had the call first, Mr Chairman, because I called your attention at the very beginning of the change.

Mr CHAIRMAN - Order. I ask both honourable members to resume their seats. I waited till all members went back to their seats before I continued proceedings. I have given the call to the honourable member for Tamar, Mr Coates.

Mr COATES (Tamar) - Mr Chairman, I wish to propose William G. McKinnon, a member of the Labor Party and a former member of this House, to fill the vacancy in the Senate. I declare him to be a financial member of the Labor Party, eligible for nomination under section 15. I put forward his nomination and I also have his written consent which I can hand to Mr Chairman.

Mr CHAIRMAN - Is the nomination seconded?

Mr SHAW (Macquarie) - Mr Chairman, I second the proposal.

Mr CHAIRMAN - Thank you.

Mr Neil Batt - May I take a point of order, Mr Chairman.

Mr CHAIRMAN - Order. I ask the honourable member to pass his letter to the Clerk. I will ask the Clerk to check whether the letter is in order.

There seems to be a technicality and the honourable President and I shall leave the dais until the ringing of the division bells.

Sitting suspended from 11.07 a.m. to 11.23 a.m.

Mr CHAIRMAN - During the suspension I had time to study the letter handed to me in support of the nomination of Mr McKinnon. I find that, under the rules adopted for this joint sitting, the letter is not in order. It does not comply with rule 16(b) in that the letter does not declare that the person is eligible to be chosen for the Senate and that the nomination is in accordance with section 15 of the Constitution of the Commonwealth of Australia. Therefore I am in the position of being unable to accept the nomination.

Mr NEIL BATT (Denison - Leader of the Opposition) - I wish to propose John Devereux as the representative and I have already provided the documentation.

Mr PATMORE (Bass) - I second that proposal.

Mr GRAY - Point of order, Mr Chairman. I believe it is not possible, under the rules of procedure for the joint sitting - or in fact the House of Assembly Standing Orders - for such a nomination to be put forward again because the same question cannot be put twice.

Mr PATMORE - On the point of order, Mr Chairman, the Standing Orders and indeed the rules which the Premier so strongly supported today are solid on this matter. If we want to be treated to another ten-minute example of hypocrisy by the Premier, I will be quite happy to sit and listen. But in attempting to formulate a cheap political stunt he has come unstuck -

Mr CHAIRMAN - Order. I ask the honourable member to address me on the rule on which he is relying.

Mr PATMORE - There is nothing in either Standing Orders or indeed the rules set forth for the joint sitting which would prohibit the Labor Party from putting forward Mr Devereux as the Senate candidate. As such, we shall put him forward and will continue to do so because there is nothing specifically negating our power to do so.

Mr LOWE - On the point of order, Mr Chairman, I submit to you that the proposal is in order. Following the declaration of the vote concerning Mr Devereux earlier, you quite properly called for new nominations. You received one proposal, Sir. You gave the call to my colleague, Mr Coates, and you received a nomination which has since been found by you to be defective in accordance with the rules. I submit that in accordance with that - because we could have had a situation where more than one nomination -

Fire bells ringing.

Mr Polley - Fire.

Mr LOWE - There is plenty of heat anyway.

Members laughing.

Mr Polley - I will do anything for Johnny Devereux, but I won't be burnt for him.

Members laughing.

Mr LOWE - Mr Chairman, I submit to you that, had the second nomination you received been in order, it could have eventuated that two candidates were quite correctly submitted, one being Mr Devereux. We would then have moved to the other rules that apply - the rules relating to a ballot.

Sir, the fact that you have found the second nomination not to be appropriate surely would not preclude the joint sitting from again exercising judgment. It may be that members of the joint sitting might come to a different judgment in the light of the new information concerning the ineligibility of Mr McKinnon's nomination. I am sure that members other than the member for Tamar, Mr Coates, knew that Mr McKinnon's nomination was ready for presentation. The fact that it was incorrect is something of which I am sure they were

not aware and therefore they would obviously be able to exercise further judgment in the light of your advice to them.

Mr NEIL BATT - On the point of order, Mr Chairman, the Premier, in taking a point of order has referred to the Standing Orders of the House of Assembly. Might I draw your attention to the rules under which this joint sitting is operating:

#### 'GENERAL RULE FOR CONDUCT OF BUSINESS

In any matter of procedure not provided for in the following Rules, the Standing Orders of the House of Assembly, in force for the time being, shall be followed as far as they can be applied.'

Clearly therefore, Mr Chairman, there is a deal of discretion in your judgment in relation to the application of those Standing Orders.

As the member for Buckingham has rightly pointed out, people voted in the previous situation presumably under the opinion that they would have a subsequent opportunity to participate in another selection process. That opportunity is now not available and therefore it is likely that, should you permit - as I believe you should, Sir - my nomination to stand, members will then have the opportunity of voting again and under those changed circumstances it may well be that we would resolve this matter satisfactorily.

Therefore, Sir, I point to the rules under which we operate. They give you the discretion and the logic which I think determines that you should allow the joint sitting to exercise that opportunity.

Mr RAE - On the point of order, Mr Chairman, rule 3 of the rules under which this joint sitting is taking place says:

'In any matter of procedure not provided for in the following Rules, the Standing Orders of the House of Assembly, in force for the time being, shall be followed as far as they can be applied.'

It is my submission to you, Mr Chairman, that they can be applied in this case. The rules prepared for the joint sitting are silent in relation to this matter and therefore there is no conflict between the rules which have been adopted by both Houses and the Standing Orders of the House of Assembly.

Standing order 110 of the House of Assembly provides:

'Except as provided for in Standing Order No. 111, no Motion or Amendment shall be proposed which is the same in substance as any Question or Amendment which, during the same Session, has been resolved in the Affirmative or Negative.'

We have just resolved in the negative the question which was put by you, Mr Chairman, pursuant to rule 16(c) and (d) of the rules for the joint sitting. Paragraph (c) provides:

'If only one person is proposed and seconded the Chairman shall propose the Question "That" ' -

so-and-so, and in this case it was John Devereux -

'be chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Donald James Grimes.'

Paragraph (d) provides:

'The Joint Sitting may debate the proposal and at the conclusion of the debate the Chairman shall put the Question.'

That is the procedure which took place.

The proposal which is now sought to be made by the Leader of the Opposition is the identical proposal which was put pursuant to rule 16 of the rules agreed for the joint sitting. The question which was put by you, Mr Chairman, was the question which you were required to put under rule 16(c) and (d). That question has been put and carried in the negative and standing order 110 therefore applies. For the sake of completeness, let me read standing order 111 because standing order 110 refers to it. Standing order 111 says:

'A Resolution or other Vote of the House may be read and rescinded upon Motion, of which three days' notice has been given: Provided that the Motion rescinding a Resolution or Vote passed during the same Session shall be approved by an absolute majority of the Whole House.'

Obviously that situation does not apply here, so we are left with a situation where standing order 110 does apply. The question is an identical question; it is one which has just been resolved in the negative; and it is one which cannot now be put again, as the Leader of the Opposition is attempting to do.

The other point I would like to make is that I agree with the submission made by the member for Buckingham that it would have been possible, in certain circumstances, for Mr John Devereux to be nominated again - but only if the question were different. The question would have been different if there had been two nominations because then you would not have been proceeding under rule 16(c) and (d), Mr Chairman, but under the later rules which provide for multiple nominations. The question which you would have put would have been a different question and the ballot which would have taken place would have been a different procedure.

So it would have been possible - and could still be possible - for there to be a proposal by which Mr Devereux could be nominated, but only if he is not the sole nominee. At the moment he is the sole nominee and, in my submission, Mr Chairman, you cannot receive that proposal which is out of order because it breaches standing order 110 of the House of Assembly.

Dr BATES - On the point of order, Mr Chairman, rule 3 of the rules for the joint sitting, 'General rule for conduct of business' makes the point that the Standing Orders of the House of Assembly shall be followed as far as they can be applied. It does not say they have to be applied but they have to be looked at and it has to be determined, in the context of this joint sitting, whether they are appropriate.

Sir, I suggest to you that what the Minister for Education and the Arts has suggested is not appropriate for the simple reason that the decision that a tied vote shall be treated as a negative vote was a decision made by both Houses of Parliament specifically for the joint sitting.

Standing orders 110 and 111 of the House of Assembly are specifically to take into account procedures of the House of Assembly. The decisions taken under those standing orders follow the procedures of the House of Assembly, and the decision in this case is one made for the purpose of the joint sitting. I do not think that the two can be equated. Under the rules the tied vote is a negative vote. I do not think it is appropriate to go back to the Standing Orders based on House of Assembly procedure to resolve that matter when the rule that a tied vote is a negative vote was developed specifically for this joint sitting.

Mr HOLGATE - On the point of order, Mr Chairman, I support the Leader of the Opposition's contention that you do have a discretion, and it is very important that you do everything possible to achieve a resolution. The only other occasion when we could have a similar situation in the House is when voting for a Speaker. Standing Orders say quite explicitly that there should be a resolution and give ways and means of finding a resolution.

Sir, I put it to you that the rules under which we are working provide quite specifically that the hours of sitting shall begin at 9.30 a.m., will continue if there is no resolution - unless otherwise ordered - from 2.45 p.m. to 6 p.m. and from 8 p.m. to 11 p.m. So the rules are quite explicit that if we meet - and we have - at 9.30 a.m. today we are obliged to go through until 11 p.m. to see if we can achieve a resolution.

Mr Ray Groom - Unless the joint sitting is adjourned.

Government members interjecting.

Mr HOLGATE - Sir, these are the Government's own rules that have been agreed to by both Houses of Parliament and I think you should apply those rules as they have been set out. Rule 5 is quite adamant that if we sit at 9.30 a.m. we should go through until 11 p.m. to try to achieve a resolution. We have a deadlocked vote, Sir. I put it to you that you should proceed to hold another ballot because in the circumstances members may have a change of heart. We may resolve this situation if we press on, up until 11 p.m.

Mr RAY GROOM - On the point of order, Mr Chairman, we do not have a special rule in this situation which is contrary to the clear provisions of standing order 110 of the Standing Orders of the House of Assembly which are required to be applied under the rules applicable to the joint sitting.

Mr Rae - It's obligatory they be applied as far as possible.

Mr RAY GROOM - That is correct.

It is really a matter of commonsense and standing order 110, which is the same as the procedure in the House of Commons, is based upon commonsense. It would be absurd if the joint sitting determined a clear, precise issue; the same question was then put again before the joint sitting and we had the same debate to consider the same issue; voted on it; and then the same question was put again - and on and on it went.

Members interjecting.

Mr CHAIRMAN - Order.

Mr RAY GROOM - It is obvious that commonsense requires that the same question cannot be put again.

Mr Chairman, I think I am correct in suggesting that you asked for 'further nominations'. The word 'further' is important - it means not the same person; it means additional people; it means are there any other people who might be proposed for consideration by the joint sitting as to whether they are suitable to be chosen under section 15 of the Constitution.

The member for Bass, Mr Holgate, said that we are obliged to continue to sit. The basis of his point was that we must be able to put the same point again and again because we must continue to sit. In fact under the rules which have been set down for this joint sitting - and I refer to rule 6 - a motion for adjournment can be put at any time. If it is considered appropriate - if there is good reason for the House to adjourn - a motion can be put setting the next sitting of the joint sitting, and those matters can be debated further then. So there is certainly no obligation for us to continue sitting until the specified time under rule 5.

Mr Chairman, I believe and I submit that it is a matter of commonsense. Precisely the same question is being put again and that is contrary to standing order 110.

Dr BROWN - On the point of order, Mr Chairman, I do not believe the Standing Orders of the House of Assembly can be applied to this situation simply because the House of Assembly does not find itself in this situation of voting for a person under these circumstances. In that quite clear circumstance, Sir, I believe your discretion should lead you to allow this nomination to proceed as it has been proposed.

There is a very compelling logic behind that, and logic must take a strong role in the way affairs are conducted in this situation. Had the nomination for Mr Devereux been proposed - had you taken the call from the Leader of the Opposition - before you took the call which led to the nomination of another person, it would have been accepted, I believe, and we would have had two nominations before the House.

Mr Rundle - Not necessarily.

Government members interjecting.

Dr BROWN - I believe it would.

Conversely, had the nomination put forward for Mr McKinnon been found acceptable we would now have a nomination for Mr Devereux before us as well. There is a compelling logic there which says that this House, through the procedures available to it, has the opportunity to vote for Mr Devereux. It is quite illogical that, because there is a technical hitch in the nomination of another person, this House should not have the opportunity to vote on the nomination for Mr Devereux. It is a compelling logic and I believe it is one that should be looked at very carefully. I believe the special circumstances in which we find ourselves here do not allow the Standing Orders of the House of Assembly to prevail. The commonsense of the situation must prevail, Sir, and I ask you to apply that commonsense.

Mr FIELD - On the point of order, Mr Chairman, the joint sitting is in this pickle because we are getting away from convention. The only appropriate standing orders we have are for the elections of individuals - the only elections that occur in the House of Assembly. It is not the same as a motion concerning an issue, it is concerned with the election of an individual. Therefore the only appropriate and relevant House of Assembly standing orders relate to the election of a Speaker, previously referred to by the member for Bass.

I refer you to standing order 8(k), (n) and (o), Mr Chairman. Standing order 8(n) says:

'In the event of there being an equality of votes between Members receiving the smallest number of votes, the Clerk shall declare such to be the case, and the votes shall again be taken ...'

Quite specifically, the only time there is a vote for a particular individual the vote is resubmitted and that would override the standing order concerning ordinary motions which was also mentioned.

This is not an ordinary motion. If we are referring to Standing Orders, the only parallel relates to the procedure for electing a Speaker. However, as the Leader pointed out, you have the discretion, Mr Chairman, to resolve the issue. This is akin to electing a Speaker; it is not akin to an ordinary motion.

Mr Rae - The rules very carefully drafted it as a question.

Mr FIELD - Mr Chairman, I put it to you that the only similarity is to the election of the Speaker by the House of Assembly and it is not appropriate that you concern yourself with the ordinary standing orders relating to putting a motion. It is appropriate that you use your discretion in this case and I suggest, Mr Chairman, that you refer to the election of a Speaker to give you guidance to resolve this issue. It is an issue which was not anticipated



by the joint select committee and it shows what problems the Parliament can get into when it interferes with the forms and procedures which have been established by convention.

Mrs Jackson - Mr Chairman -

Dr Madill - Mr Chairman -

Mr CHAIRMAN - Order. I believe I have heard enough on the point of order and I believe I have reached a position where I can rule on this matter.

It is quite clear to me that the rules adopted by both Houses for the conduct of this joint sitting are silent on the situation in which we now find ourselves. Rule 3, 'General rule for conduct of business' says:

'In any matter of procedure not provided for in the following Rules, the Standing Orders of the House of Assembly, in force for the time being, shall be followed as far as they can be applied.'

Because these joint sitting rules are silent I have to turn to the Standing Orders of the House of Assembly. It is quite obvious to me that, under standing order 110, I cannot now accept the further nomination of Mr Devereux because it would be a nonsense after the House has already voted and the proposal has been negatived. Therefore I cannot accept the nomination.

There is room for this joint sitting to adjourn to another date when other nominations can be put forward and I can also call for further nominations this morning. That is the ruling; I do not accept the second nomination.

Mr FIELD (Braddon - Deputy Leader of the Opposition) - Mr Chairman, I seek leave to make a motion without notice for the purpose -

Mr CHAIRMAN - Order. I cannot accept any further motions. If the honourable Deputy Leader reads -

Mr FIELD - I am seeking leave, Mr Chairman.

Mr CHAIRMAN - No, I will not accept it.

Mr FIELD - I dissent from your ruling, Mr Chairman.

Mr CHAIRMAN - The honourable Deputy Leader cannot dissent. My ruling is final under these rules.

Mr GRAY (Lyons - Premier) - Mr Chairman, I move -

That this joint sitting adjourn to a time and place to be fixed by both Houses of Parliament.

Mr Field - That motion is out of order.<sup>1</sup> Mr Chairman, by your own ruling.

Mr CHAIRMAN - Order. There is power under the rules of this joint meeting for a member to move that the sitting be adjourned to another time and that is what has taken place. The motion made by the honourable Premier is in order.

Mr NEIL BATT (Denison - Leader of the Opposition) - Speaking to that motion, Mr Chairman -

Mr Rae - It is to be put without debate.

Mr CHAIRMAN - Order. I am sorry; it has been drawn to my attention also that the motion shall be put without debate.

Mr WRIEDT - Point of order, Mr Chairman. I put it to you that this joint sitting has the right to move to dissent from your ruling. Two minutes ago you declared that we are no longer operating under the rules of the joint sitting which have been laid down here and we have now reverted to the Standing Orders of the House of Assembly which permit motions to dissent from the rulings of the Chair.

Mr CHAIRMAN - Order. I draw the honourable member's attention to rule 13 which says:

'On all points of order and on all questions arising during the proceedings of the Joint Sitting, the ruling of the Chairman shall be absolute and final.'

Mr WRIEDT - But that is not what we are under; we are operating under the House of Assembly's Standing Orders now. You said we were.

Mr Bennett - Only when the rules don't apply and they do apply. Wake up.

Mr Field - It is a circus, Mr Chairman.

Members interjecting.

Mr CHAIRMAN - The question is -

That the joint sitting of the Parliament be adjourned to a time and place decided by both Houses of the Parliament.

Members interjecting.

The joint sitting divided -

AYES 27	NOES 25
Mr Archer	Mr Baldock
Mr Beattie	Dr Bates
Mr Bennett	Mr Charles Batt
Mr Beswick	Mr Neil Batt
Mr Bonde	Mrs Bladel
Mr Ian Braid	Mr Harry Braid
Mr Broadby	Dr Brown
Mr Chellis	Mr Coates
Mr Cornish	Mr Field
Mr Davis	Mr Hiscutt
Mr Evers	Mr Holgate
Mr Fletcher	Mr Hope
Mr Ginn	Mrs Jackson
Mr Gray	Mrs James
Mr Ray Groom	Mr Llewellyn
Mr Roger Groom	Mr Lowe
Mr Hodgman	Mr Meyer
Mr McKay	Mr Patmore (Teller)
Dr Madill	Mr Peart
Mr Mainwaring	Mr Petrusma
Mr Page	Mr Polley
Mr Rae	Mr Weldon

Mr Robson  
Mr Rundle  
Mr Shaw  
Mr Stopp (Teller)  
Mr Wilson

Mr White  
Mr Wing  
Mr Wriedt

Adjournment of joint sitting so agreed to.

The joint sitting adjourned at 11.55 a.m.