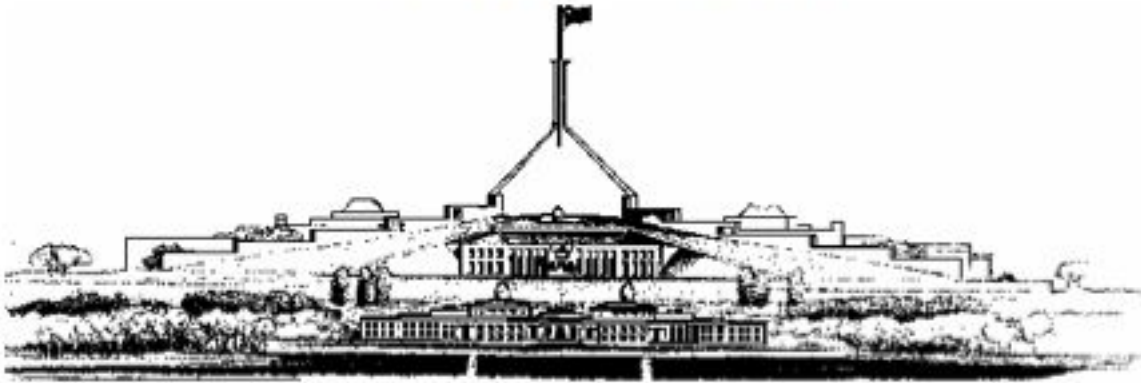




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**Main Committee**

**WAR CRIMES AMENDMENT BILL 1999**

**Second Reading**

**SPEECH**

**Thursday, 9 December 1999**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

**Date** Thursday, 9 December 1999  
**Page** 13393  
**Questioner**  
**Speaker** Danby, Michael, MP

**Source** House  
**Proof** No  
**Responder**  
**Question No.**

**Mr DANBY** (Melbourne Ports) (11.26 am)—The War Crimes Amendment Bill 1999, concerning the extradition of war criminals, will be some small consolation to the Australian public and even smaller consolation to those who still suffer with memories of the atrocities committed during World War II, many of whom are my constituents. As has been outlined by the member for Kooyong, there are strong reasons of legal uniformity for supporting this bill, which changes the level of legal proof needed by countries seeking extradition of war criminals from Australia. Bipartisan support for this bill should not lead the government, particularly the Minister for Justice or the Attorney-General, to think that there is approval for what some regard as their inaction in tackling these issues of war crimes since this government has been in office.

In all fairness to this government I would say, however, that it is probably not the only one whose handling of this issue is legally, ethically and politically problematic. Our inaction in Australia is currently affecting our reputation overseas. Only last weekend, the influential US current affairs program *20/20*, watched by an estimated 60 million viewers around America and hosted by America's premier current affairs interviewer Barbara Walters, alleged that mass murderers are able to live comfortably in Australia without fear of prosecution, as compared with the United States, which has continued to regularly prosecute and deport Nazi war criminals.

The current government's response to these queries since it has been in office was summed up by the Attorney-General in 1997. Indeed, it was taken up again by the minister for justice in her various media appearances on Monday in response to the *20/20* program. I would sum up their attitude as insouciance and inaction. In my view it is, quite frankly, embarrassing. The minister told the *7.30 Report* that she would not look into these matters herself. Rather, in a bureaucratic sidestep, she said that this was a matter for the Australian Federal Police. She knows full well that the Australian Federal Police are under the clear impression that the government does not want this matter raised or prosecutions recommenced.

One gets the impression from the media appearances of the minister for justice that she has kept herself in splendid ignorance of some of these issues: benign neglect, the blind eye to the telescope. At least that is how she came across in her response to the *20/20* program, when Mr O'Brien interviewed her on the *7.30 Report*. She was asked whether she supported a past government's decision in 1992 to disband the Special Investigations Unit. The SIU was set up within the Attorney-General's portfolio to investigate and prosecute, under the amended War Crimes Act 1945, any individuals found to be residing in Australia who had committed crimes against humanity during World War II.

We know that the minister for justice was not in government then, but she claims to have been advised that one of the cases that had been put by the Commonwealth Director of Public Prosecutions, regarded by the unit as its strongest case and above the three cases which had been unsuccessful, did not proceed because the Director of Public Prosecutions decided there was not enough evidence to proceed.

We know that this is simply not true. The minister and the government know that. After three unsuccessful prosecutions, mounting pressure from the then Liberal opposition and growing expenditure, policy fatigue set in. The then government announced that it would close the Special Investigations Unit. With only weeks until the closure of the unit, something of a battle developed between the SIU and the then Attorney-General and the Commonwealth Director of Public Prosecutions over the fourth and most significant war crimes case, PU38, involving a gentleman called Karlis Ozols, who has been mentioned a number of times by previous Attorneys, so I am not doing anything unusual in mentioning his name here. Ozols was a volunteer in the SS auxiliary, the Arajs Commando, and still lives peacefully in Melbourne. He should and could have been dealt with by Australia's legislation if the recommendation of senior independent counsel, Mr Peter Faris QC, had been addressed. This is in direct juxtaposition to the minister's ill-advised comments that nothing further could be done on this matter, according to her advice.

On 28 June 1992, Faris concluded his advice to the DPP, estimating that, while some research still needed to be completed, it would take only another three months to have all of the evidence prepared for trial against

Ozols, that there was already a prima facie case for mass murder and war crimes. Mr Faris set out a number of charges and advised, 'It would be wrong to shut the investigation down. Justice demands the investigation be completed.' The DPP sought to continue the investigation but the then Attorney-General resisted and referred the matter to the Australian Federal Police where the file has remained in a drawer. No prosecution was ever commenced; the investigation was not completed.

In March 1996, of course, the government changed hands and in 1997 a statement by the present Attorney-General, Daryl Williams, announced that the case was concluded and that there was little chance of success in pursuing it to finality. The documentation surrounding Karlis Ozols remained tightly restricted by the Federal Police and the Attorney-General's Department until late 1997. Indeed, the full circumstances surrounding Ozols was never put in the final report of the SIU to parliament.

In June 1992, Faris, the former head of the NCA, had gone through all of the charges, particularly as far as Mr Ozols was concerned. It is interesting to consider the three charges that he specifically put. Let us have a look at some of them. The first was that Mr Ozols was involved in killing people himself, as a lieutenant in the Latvian SD at Maley Trostenets. Mr Faris said there was a prima facie case that Ozols had committed war crimes between July 1942 and 27 September 1943 at Maley Trostenets. The second charge that he suggested there was a prima facie case for advancing was in the Minsk ghetto where, as the commander of the Arajs Commando, Ozols was directly and indirectly responsible for deaths.

Finally, Faris said that between 8 and 9 February 1943, Ozols and other members of the Latvian Arajs Commando under his command assisted the Germans in killing more than 2,000 Jews in the Slutsk ghetto. Mr Faris and the SIU were not concerned about issues of identification which were so important in other cases that have been considered around the world, including the very famous issue of Mr Ivan Demjanjuk and his identity. First of all, Mr Faris established that there were overseas witnesses and then he established that there were local witnesses, some of whom I have spoken to personally. Some of them were about 12 or 13 and had known Mr Ozols all of their lives.

Thirdly, was a killing order from SS Obersturmführer Strauch in which Hilfsbeamten or supernumerary Ozols name was specifically included as a person responsible for various killings. Finally, in the state court of Hamburg in 1979, the German government requested an interview and extradition of Mr Ozols to participate in various other trials that were taking place against members of the Arajs Commando. The German court established all of the details of Mr Ozols' presence at all of the three incidents that Mr Faris QC recommended, via the DPP, to the Attorney-General as the reason for a prima facie case being necessary.

In North Queensland recently, a person who some would describe as an elderly pensioner has been charged as the alleged perpetrator of the murder of two children that took place more than 20 years ago. No-one in this parliament would suggest that because this gentleman is an age pensioner no charges should be pursued against him. The statute of limitations does not apply, according to any of us, to the charge of murder, and I think it is simply being consistent that we ought to apply it in these cases ourselves. The member for Kooyong spoke of the moral imperative that drives a democratic society like Australia in these kinds of issues, in remembering why we participated in that great struggle for democracy during the Second World War. I believe that this moral imperative should have been behind all of our actions in dealing with all of these issues, including the government's welcome amendment to repeal section 22 of the War Crimes Act 1945.

If people feel that perhaps these issues do not apply to Australia, I remind them of events that took place immediately after the dropping of the Special Investigations Unit and the policy fatigue that took place at that time. I go first to what happened in Bosnia. The war crimes that took place there led to the United Nations setting up special war crimes investigators. Ironically, the person who is now most prominent in seeking prosecutions against war criminals in Bosnia and Serbia is our own Graham Blewitt, who was the last head of the Special Investigations Unit that was too early sent into legal oblivion by a previous government and whose work should have been taken up by the current government.

If we look at the disgraceful situation perpetrated by Indonesian military authorities in East Timor after the 30 August referendum, the widespread international community view and the view of the UN Human Rights Commissioner is that war crimes and crimes against humanity may have been perpetrated in East Timor by the then military authorities of Indonesia. If people feel that in dropping our interest in war crimes we have in any way contributed to this expectation in some areas of the international community that war crimes and crimes against humanity such as those perpetrated in Bosnia and East Timor have in any way been lessened, we stand partially to blame for that development.

I conclude by indicating my support for these amendments to the War Crimes Act 1945. I hope that the now democratic countries of the Baltic take the opportunity to use Australia's new ability to assist them in extraditing the two or three people who have been talked about internationally as people who may be in Australia and who, according to the democratic and historical experience of those Baltic countries, it is seen as essential to bring to those countries for trials and examination of their activities during World War II against citizens of those countries. I commend this amendment to the War Crimes Act 1945.