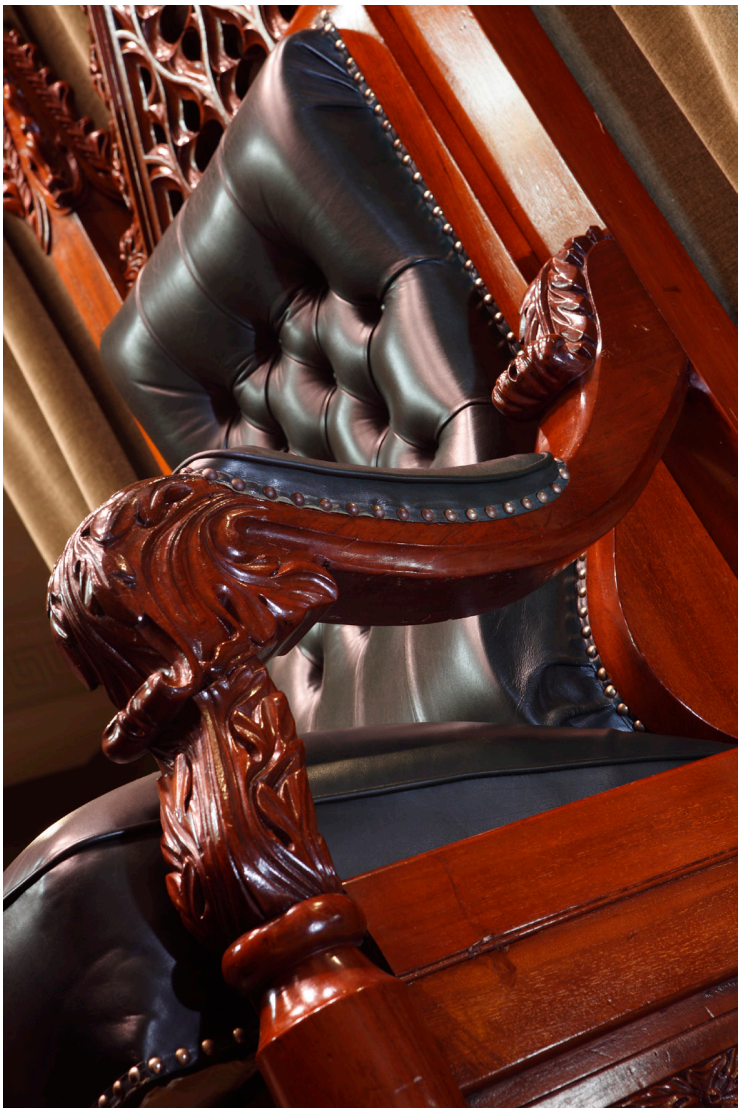
Legislative Assembly

Decisions from the Chair

Considered Rulings



November 2019

LEGISLATIVE ASSEMBLY

DECISIONS FROM THE CHAIR
CONSIDERED RULINGS

2019

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Standing Order 62 – Personal Explanations

SPEAKER TORBAY: I wish to draw members' attention to the proper use of personal explanations in the House.

A personal explanation is a vehicle to enable a member to briefly explain any matter which reflects upon the standing, character or integrity of that member, or reflects upon that member in a personal way. Accusations made against a member by another member of the House are only able to be refuted by way of personal explanation if such accusations cast serious aspersions upon the member's character.

Because they are required to be brief, personal explanations must be confined to a statement of the precise reference and must not debate the issue. *New South Wales Legislative Assembly Practice, Procedure and Privilege* states that "In practice, a member should confine remarks to 'This is what was said; these are the facts'" (1st edition, page 98).

A personal explanation should not be used by members to refer to remarks made by other members during debate that simply do not conform with their own views, nor to refute allegedly inaccurate statements made about them or a Minister's answer during Question Time. A personal explanation is also out of order if a new matter is introduced by a member under the guise of a personal explanation. It is not within the scope of a personal explanation to call for a member to withdraw words used in the House. Members should also take into account that in a robust Chamber such as this, they should not be too sensitive about remarks made about them in the thrust and parry of debate.

Lastly, I remind members that, under standing order 62, personal explanations are made with the leave of the Speaker. Accordingly, I will not hesitate to withdraw leave at any point that I deem a member has misused or abused the opportunity to make a personal explanation.

PD 24/03/2009, p 13605

Standing Order 72 (former SO 81) – Judiciary – Criticism of

SPEAKER ELLIS: The Leader of the Opposition asked me a question as to how in effect an honourable member might cast a reflection on a member of the judiciary, and I replied to him that this may be done by the moving of a substantive motion. The Leader of the Opposition then interjected – and it appears in *Hansard* – "That is what we intended to do. That is what we are about to do." In other words it is plain that the Leader of the Opposition confirmed the view that I took that the Deputy Leader of the Opposition was intending to cast reflection upon a member of the judiciary. The question asked now by the Leader of the Opposition affords me the opportunity to make, for the guidance of honourable members, some observations concerning reflections upon the judiciary. The conduct and actions of a judge may be criticized or reflected upon only by a specific and distinct substantive motion naming the judge and stating the charge or complaint against him, and the honourable

member who moves such a motion must produce evidence to support his charges. The motion must be confined to the charge or complaint and must not relate to other matters as well. It is not sufficient merely to impute improper motives or to make reflections, insinuations, or innuendoes in a general way. The motion must be specific.

This has been the accepted practice of the House of Commons since time immemorial, and it has been the accepted practice of this Parliament since its establishment. The object of this rule is not to protect malicious or dishonest judges, but to protect the *public* from the danger to which the administration of justice would be exposed if persons therein were readily subject to inquiry for malice or misconduct. It is essential that judges should be permitted to administer the law not only independently and freely and without favour, but also without fear of attack upon them or their decisions, which in the nature of the system must inevitably incur the displeasure of one person or another. If this were not the rule attacks upon and calumnious accusations against judges would clear the way for the subversion of the independence of the judiciary and great mischief and insecurity in the administration of justice. Indeed, as one learned English judge has said, the situation might ultimately develop in which no man but a beggar or a fool would agree to act as a judge.

Two important problems may be involved in this present controversy before the House:

(1) are these principles of judicial immunity from attack confined to cases of misconduct in the exercise of the judicial function? Or
(2) do they equally apply when misconduct occurs in the judge's private capacity or in his capacity away from the bench such as in a Royal Commission?

The answer is that these principles of judicial immunity apply to both cases. The authority for this may be found in Todd's *Parliamentary Government in England*, second edition, volume 2, page 874, as follows:

> The House of Commons –

And the same applies to this Parliament

> - 'should not initiate, and Ministers of the Crown ought not to sanction, any attempt to institute criminative charges against anyone, unless upon some distinct and definite basis; and in the case of a judge, such charges should only be entertained upon allegations of misconduct that would be sufficient, if proved, to justify his removal from the bench. But it is immaterial whether such misconduct had been the result of an improper exercise of his judicial functions, or whether it was solely attributable to him in his private capacity, provided only that it had been of a nature to unfit him for the honourable discharge of the judicial office'.

Similar rulings have been made in the Parliament of the Union of South Africa in 1935; and on 9th November, 1932, Mr Speaker Levy ruled in this House that it was not proper to attack the integrity or impartiality of a judge sitting as a Royal Commission and he refused to allow the impartiality of Mr Justice Halse Rogers, then sitting on the greyhound inquiry, to be impugned in a debate on a general motion. The other problem which may be pertinent at

the moment is whether it is competent to reflect upon a judge without moving for his removal. There is authority for the proposition that no aspersion shall be cast upon a judge or action taken against him in the Parliament except pursuant to proceedings for his removal. Authority again is in Todd's *Parliamentary Government in England*, second edition, volume 2, page 860, where the learned author says:

'The importance to the interests of the Commonwealth, of preserving the independence of judges, should forbid either House from entertaining an application against a judge unless such grave misconduct were imputed to him as would warrant, or rather compel, the concurrence of both Houses in an address to the Crown for his removal from the bench'.

If a judge may be admonished without being removed the admonition would necessarily carry with it the threat of removal on repetition of the alleged offence. This would obviously subvert the principle of judicial independence. Accordingly, if an honourable member feels that a judge has been guilty of misconduct his substantive motion should be for the removal of the judge. If he is of the opinion that the conduct does not justify removal, then it would be improper to seek to admonish him at all. Only in this way may the independence of the judiciary be fully secured until the judge whose conduct is in question is removed.

PD 29/03/1966, pp 4706-8

SPEAKER ELLIS: Honourable members will, I hope, appreciate that as Speaker I am anxious – as always I have been anxious since I assumed this office – to avoid becoming involved in any political controversy that might lie behind events and circumstances out of which this motion of dissent has arisen. The motion raises a very important point of practice and procedure and constitutional propriety. Some discussion of it, I think, is bound to be useful to all honourable members in their understanding of the relationship of Parliament to the administration of justice. Because any statement by me from the Chair might hereafter be sought to be given more weight than one made from the floor of the House, I have prepared, with some care, a statement that I propose to make in this matter.

The purpose of the motion is to overrule my ruling that the judiciary is free from criticism so far only as it prohibits any reflection on the action or conduct of a judge outside his judicial activities. In other words, the Deputy Leader of the Opposition, as I understand him, submits to the House that criticisms of those actions of the judge when he is functioning not in the discharge of his duties as a judge, but in some private capacity or sitting as a Royal Commissioner, is permissible without the necessity to move a substantive motion for the judge's removal.

One's view about what should be the proper rule about these non-judicial activities depends upon the degree of importance and emphasis that one places upon the necessity to preserve inviolate the complete independence of the judiciary transcends all other considerations and is so important in our way of life that we as a Parliament must be prepared to yield up some measure of the right of criticism which is open to us in respect of actions of other persons not occupying the exalted position of a judge.

It is stated in Todd's *Parliamentary Government in England*, volume 1, at page 571 – and this is a well-known and accepted authoritative publication on constitutional law:

> 'By the theory of our constitution, those to whom the administration of justice is entrusted are not responsible to Parliament, except for actual misconduct in office. Otherwise' –

That is in matters outside their judicial functions –

> 'they occupy a position of complete independence; and necessarily so, for they are bound to administer the law without fear or favour'.

It will be seen that the learned author of this work makes it clear that it is only for actual misconduct in their judicial office that judges are responsible to Parliament. In respect of their functions outside their judicial office they are not answerable to Parliament, nor may they be criticised in Parliament, unless of course the criticism is coupled with a motion for their removal from office.

Again, this statement was made by Bourinot in another great constitutional work, *Parliamentary Procedure and Practice in the Dominion of Canada*, at page 442:

> 'The rules of the two Houses are only intended to protect their own members, and consequently any reflections on the conduct of persons outside cannot be strictly considered as breaches of order. But the Speakers of the English Commons now always interfere to prevent as far as they can all personal attacks on the judges and courts of justice. They have always felt themselves compelled to say that "such expressions should be withdrawn", and that "when it is proposed to call in question the conduct of a judge, the member desiring to do so should pursue the constitutional course of moving an address to the Crown." Members have even been interrupted in Committee of the Whole by the Chairman when they have cast an imputation upon a judicial proceeding.'

Again at page 135, Bourinot says:

> 'The independence of the judiciary has been for very many years recognised in Canada, as one of the fundamental principles necessary to the conservation of public liberty.'
>
> . . . . . .
>
> 'In impeaching a judge for misconduct in office, the House of Commons discharges one of the most delicate functions entrusted to it by law. In such a matter it cannot proceed with too great caution and deliberation.'

The learned author proceeds then to lay down that only upon a substantive motion for dismissal may a judge be criticised. The practice in Canada and the House of Commons, when it is intended to move such a motion, has always been to constitute the House into Committee of the Whole for the purpose of sorting out the facts in anticipation of going back to the House and moving the substantive motion. Though I am not familiar with the

work quoted by the Deputy Leader of the Opposition, I imagine that that is the procedure that he was referring to.

In addition to these authorities there is a statement contained in Todd's *Parliamentary Government in England* that I quoted to the House on 29th March. I emphasise that my ruling is not something that I have drawn out of a clear blue sky. It is based upon these many grave constitutional pronouncements by learned authors and for my part they are sound and should be strictly followed in this Parliament.

At first reading, it may be thought that these constitutional concessions by Parliament to the judiciary may impose too heavy a restriction upon freedom of speech in a sovereign assembly. If however I had to choose between those restraints upon my freedom of speech in Parliament, and, on the other hand, the liberty in Parliament freely to attack judges both for their actions on the bench and off it, without being under any obligation to accept the responsibility for moving for their removal, I should come down firmly on the side of preserving and protecting the independence of the judiciary. I have no doubt that honourable members would subscribe to that. Indeed the stakes in this choice are so high that I readily regard this concession as a small price to pay to achieve judicial independence and public confidence in our judges.

It may be in the minds of some honourable members – I think it is in the mind of the Deputy Leader of the Opposition and that this is what prompted him to move his motion of dissent – that this judicial immunity from attack in Parliament prevents all comment upon decisions and actions of judges. This is simply not so. Indeed it has always been competent and in order for an honourable member to criticise judgements of the court and a wide range of criticism is permitted to him.

In this connection I quote to honourable members from a judgement of Lord Atkin in the case in the Privy Council of *Ambard v Attorney-General of Trinidad and Tobago*, 1936, 1 All E.R. 709. I have had this reference in my personal notebook on my desk here in the House for several months because I felt that one day the occasion would arise when this could be quoted to honourable members to let them know that their freedom of speech in criticising the actions of judges is pretty wide. The quotation is:

> 'No wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way; the wrong-headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.'

These are the principles that will apply in this Parliament and honourable members will doubtless appreciate that my ruling that judges are immune from attack in respect of their non-judicial acts still allows them a great deal of latitude in debate in criticising their

judgements, their decisions and their public acts. The essential limitation of such discussion and criticism is that it must be made in good faith; there must be no imputation of improper motives on the part of the judges and the criticism must not be in any way malicious or intended to impair the administration of justice. In this connection, getting back to the actual circumstances at which this controversy arose, if the proposals of the Boundaries Commission were published today, I would not stop the honourable member from rising and saying that the effect of these proposals would be to grant an extra ten seats to the Labor Party or to the Liberal Party but I would stop him from imputing improper motives against the commission, where it had a judge on it, by suggesting his proposals were influenced by his own private political views – unless he indicated that he proposed to move a substantive motion for the removal of the judge.

I hope that this House will proceed with very great caution and will not come to any decision which may be likely to expose the administration of justice to easy criticism and attack. If it does, it will at once put in peril the independence of the judiciary which has been the bulwark upon which our free society has been founded. If the independence of the judiciary is shaken, or if public confidence in our judges is in any way undermined, we will be inviting chaos in our system. I hope that the House will remember my ruling on 29th March that these principles are not designed to protect bad judges. They are designed in the interests of the public to preserve inviolate the independence of the judiciary so that it may act freely and without fear, so that the public may have complete and unqualified confidence in its integrity.

Later, when his guidance was sought as to whether it was possible for a member to criticize a judge in his private capacity and in his non-judicial capacity without moving a substantive motion to remove him from office, provided imputations of improper motives were not made, the Speaker stated: I would apply this decision of Lord Atkin in which he says:

> 'The path of criticism is a public way; the wrongheaded are permitted to err therein: provided that members of the public' –

And here we can read members of Parliament –

> 'abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune.'

I said that I would apply that decision.

PD 31/03/1966, pp 4936-8 and 4947

Standing Order 72 - Offensive Words

SPEAKER HANCOCK: "During recent sittings I have become increasingly concerned about the practice that has developed of members not being inclined, upon request from the Chair, to

withdraw offensive words, imputations or personal reflections upon another member. The use of offensive words against another member is a breach of order and is prohibited under Standing Order 72. Similarly, Standing Order 73 specifies that imputations of improper motives and personal reflections on members are disorderly other than by substantive motion. These standing orders come into play if a member takes a point of order that the words used, or imputations or reflections made, are objectionable to the member and should be withdrawn. The Chair may intervene and take action if offensive or disorderly words are used by a member. The Chair would not usually intervene unless the words used are particularly distasteful and have been clearly heard by the Chair. The Chair also has an overriding duty to preserve the dignity of the House and, in that regard, would not usually contemplate withdrawal where the objection raised is frivolous or the result of a misunderstanding.

In view of the confusion that has occurred over the interpretation of those standing orders, I can provide the following advice to the House by way of clarification. If objection is taken against words used, or imputations or reflections made, on the ground that the member finds them personally offensive, the Chair will ascertain what words were spoken. If the Chair finds the words used were capable of giving offence, the member will be ordered to withdraw them and, if it is a particularly serious case, the Chair has discretion to direct that an apology be given. An apology is not sought purely at the request of the member taking offence. If the member refuses to withdraw or only offers a qualified withdrawal, the Chair has discretion to name the member under Standing Order 250 (3) or remove the member from the House under Sessional Order 249A."

PD 14/8/2012, p 13669

Standing Order 73 (former SO 82) – Reflection on Members by substantive motion only

SPEAKER O'DEA: As is often noted, proceedings in this House can be robust. This place affords members the right to freedom of speech. But the freedom of speech must also be balanced with the obligation to speak respectfully. Standing Order 73 provides that: Imputations of improper motives and personal reflections on members of either House are disorderly other than by substantive motion. The ruling I am now making on Standing Order 73 is informed by the large number of rulings given from the Chair in previous Parliaments. Previous rulings distinguish between: sustained attacks on individual members based on character, motive or particular allegations of misconduct; and relevant criticism of Government policy or decision-making, or actions of Ministers, members or others. Standing Order 73 is not aimed at this second type of negative comment, including those comments directed to a wider group such as members of a political party. That will be my perspective when ruling on future points of order regarding Standing Order 73 or when considering potential withdrawal of relevant remarks.

I will continue to uphold the rights of members on both sides to speak freely during proceedings, mindful of the need to strike an appropriate balance in regulating debate. Statements or allegations made under the guise of questions without notice may be ruled

out of order. I also remind members that they can use various provisions in the standing orders to object to undue attacks on their character and seek to correct the public record.

PD 20/8/19, p 11

SPEAKER MURRAY: I ask all members to take particular note of the statement I am about to make in relation to questions without notice. In recent weeks the Chair has become increasingly concerned about the form and content of questions without notice. I remind members that the provisions of Standing Order 137 apply to questions without notice in the same way as they apply to questions upon notice. There appears to be a tendency to include in questions without notice imputations of improper motives, arguments, inferences and expressions of opinion. The inclusion of all or any of those matters in a question without notice would cause the Chair to rule the question out of order. The launching of a personal attack or the imputing of improper motives in the guise of a question without notice is in breach of Standing Order 82. Such matters should be dealt with by way of substantive motion. In essence, questions without notice should be brief, singular in nature, to the point and, most important, they should not contain additional information or asides that are not necessary to make the question intelligible. The Chair proposes to enforce those guidelines. If members are in doubt as to the admissibility of their questions, I suggest they avail themselves of the excellent advice of the Clerks at the table.

PD 02/06/1998, p 5514; VP 02/06/1998, p 668

SPEAKER MURRAY: In the context of the behaviour of members during question time last Thursday [17 October], and threats of actions by members reported in the media over the weekend, I wish to make some comments about the general behaviour of members. Parliament is held in our society as a paramount institution to be regarded with respect. Indeed, school groups visiting the Parliament are instructed to be on their very best behaviour when sitting in the galleries. To earn and maintain that respect members must set an example as role models. Further, examples of rowdy behaviour by members contradict and undermine the positive values of a participatory democracy being instilled through civics education. At the same time I do not want to shackle members, who have the undoubted right of freedom of speech in that they are protected from legal proceedings being taken against them. As Erskine May's *Parliamentary Practice* says:

> Subject to the rules of order in debate . . . a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals . . .

However, to balance this freedom of speech there is a countervailing responsibility to use this right with considered care and due caution. I warn all members that the Chair will not tolerate a repeat of last Thursday's behaviour during question time.

PD 22/10/1996, p 5126

Standing Order 74 – Offensive or disorderly words and quarrels between Members

SPEAKER O'DEA: Following yesterday's sitting, I received a complaint from a member in relation to name calling in this place. I have made my views clear about comments on people's physical attributes, and have asked for a more dignified and respectful approach.

I now extend those comments by notifying members that from today I will take a zero tolerance approach to name calling in this place across the board. Members use question time to spar across the Chamber, often with considered and intelligent debate and sometimes with humour. There is nothing wrong with that. However, this should not involve ill-considered and immature name calling. It is unacceptable and unparliamentary, and I cannot allow it to continue. Parents do not accept it from toddlers. Teachers do not accept it in their classrooms. I note that we have primary schoolchildren in the Chamber today, as we often do. If we are to reflect community expectations in this place and set a good example, it must not be accepted here either.

As parliamentarians we support anti-bullying campaigns. We put great effort into improving mental health in our communities. Yet, in here we often see a public display of bullying behaviour that should not be tolerated. For us to act in such a way is hypocritical. Politicians lament not being understood or respected for the good work they do. I know how hard members in this place work and how much they care about the community. However, if we are to be respected and if Parliament is to earn the trust of people, it starts with our behaviour.

Members who transgress may be asked by the Chair to withdraw comments directly, whether or not other members object. If they persist, they may be placed on a call to order or ultimately removed from the Chamber.

PD 8/8/19, pp 31-2

Standing Order 75 – No Member to be Referred to by Name

SPEAKER TORBAY: I wish to raise the issue of members referring to other members by their correct titles. Standing Order 75 provides: "A Member shall refer to other Members by their title of office or by the name of their electorate." A trend has developed for members to regularly refer to other members by name or at times by a disparaging nickname. I remind members that this practice is disorderly and warn members that if they persist in referring to other members incorrectly they will be called to order for their failure to conform to the standing orders.

PD 09/03/2010, p 21072

Standing Order 77 (former SO 86) – Anticipation of Debate

SPEAKER MURRAY: Order! I have given due consideration to the issue of anticipation of debate during the currency of the budget debate. There are many rulings of various Speakers over a long period of time, some of which appear to be contradictory and relate to procedures which are no longer in existence, for example the adjournment debate and the grievance debate. As the budget debate extends over many sitting weeks and covers virtually all aspects of activities of government, and affects all citizens in some way or other, it seems to me that to apply the anticipation-of-debate rule in Standing Order 86 during the currency of the budget debate would be too restrictive to members. I propose that, unless otherwise directed by the House, this rule should not apply during the currency of the budget debate on the basis that the budget debate is not necessarily the most effective means for all issues related to the budget to be raised.

In relation to specific procedures I wish to make the following observations. It has long been the practice, by virtue of various rulings, to allow questions without notice relating to community and business reaction to the budget or seeking further information on the effects of the budget. I propose to follow these rulings and continue to allow such questions. In relation to motions for urgent consideration and matters of public importance I note that matters concerning the effect or application of budget proposals would be in order during the currency of the budget debate. It seems to me that it is appropriate for members to use these procedures to draw the attention of the Government to budget implications, both positive and negative, which are of an urgent and important nature.

While it would not be in order during private members' statements to raise matters which are the subject of a bill before the House, such a rule should not apply to the Appropriation Bill and cognate bills provided other restrictions applying to private members' statements are not infringed. General business notices of motions relating to the budget may be given during the currency of the budget debate. However, I observe that such a practice may be of little benefit to members because of the procedures governing consideration of such matters whereby there is an inevitable time delay before such motions come before the House for debate, with the likelihood that the budget debate will already have concluded. In summary I rule, unless otherwise directed by the House, that during the currency of the budget debate the anticipation-of-debate rule does not apply to any other procedure available to members.

PD 08/05/1997, p 8317

Standing Order 91 (former SO 101) - Privilege

SPEAKER MURRAY: I wish to review the matter raised by the honourable member for Pittwater as a matter of privilege on Thursday, 20 November 1997. At that time I did not rule on the matter, as required in accordance with Standing Order 101, in regard to the establishment of a prima facie case and precedence. I have carefully examined the matters raised in the statement of the honourable member for Pittwater and have had the opportunity to discuss the matter with him. I have determined that the matter is not one of privilege as the alleged threat of Mr Mitchell does not preclude the honourable member for Pittwater from freedom of speech in raising matters in the House.

As I understand it, Mr Mitchell's threat to the member was, in essence, not to repeat the accusation of political bias in public as he would sue him for defamation. This type of challenge is not uncommon, as members are often asked to repeat statements outside the House. Accordingly, I rule that the notice does not have precedence and that it be placed under general business, unless the honourable member wishes to withdraw it. I remind all honourable members of the requirement to use parliamentary privilege responsibly and of the sessional order that provides for a citizen's right of reply.

VP 20/11/1997, p 293
VP 25/11/1997, pp 308-9
PD 25/11/1997, p 2446

SPEAKER MURRAY: said that Members would recall that on Thursday 17 October 1996 the honourable member for Monaro and the honourable member for Ermington had raised as a matter of privilege that the Leader of the House stated they both were "protectors of paedophiles". The Acting Speaker had consequently recommended that their notices of motions have precedence for the next sitting day.

The Speaker said that he had carefully considered that recommendation, examined Hansard, reviewed the matters raised, had briefings from House authorities and was now in a position to give a fully considered ruling. In doing so he referred honourable members to his ruling given on Wednesday 18 September 1996, when he ruled that one element of a breach of privilege is the reflection upon the character or the actions in the House of a member, which prevents a member from carrying out their duties. To make a matter of privilege out of every heated exchange in this robust House would make the proceedings unworkable. Indeed in the Commonwealth jurisdiction the Parliamentary Privilege Act 1987 specifically abolished contempts of defamation. He did not necessarily condone certain methods of debate in the Chamber, however, it did have the reputation for lively debate.

The Speaker also noted that when the Leader of the House made his statements, the member for Ermington and the member for Monaro failed to take points of order. This was left to a third member. Nor did they speak to the point of order. This undermined the subsequent argument put forward. Indeed, the member for Ermington countered the claims in the opening remarks when contributing to the debate.

The Speaker therefore ruled that no prima facie case had been established as the members had failed to demonstrate how what was said would impede them in the performance of their duties as members. He also directed that the notices be struck from the Business Paper. The Speaker noted that a personal explanation, as suggested by the Acting Speaker last Thursday, would have been a more appropriate manner for the members to deal with the matter and would allow both the member for Monaro and the member for Ermington to speak to that matter.

PD 17/10/1996, p 5045
VP 17/10/1996, p 486
PD 22/10/1996, p 5146

VP 22/10/1996, p 489

Standing Order 91 (former SO 101) – Members' Right to Freedom of Speech

SPEAKER ELLIS: It is the right of every member to say what he likes under privilege in Parliament, subject only to observance of the forms and practice of the House itself. He does so at his own risk of incurring the displeasure of the public and possible the censure of the House itself.

The right of free speech is something that the Speaker is bound to safeguard and protect, and just as it is the right of all members to use, equally it is a right that members should not abuse. Any abuse of the right of free speech in Parliament is a reflection upon the honourable member concerned. The right should always be exercised with restraint, particularly when referring to persons who have no right of audience in this Parliament and are, therefore, defenceless in the face of any irresponsibility.

In my opinion an honourable member should not reflect on private citizens unless he is satisfied that there are compelling considerations of public interest requiring him to do so. If he wishes to make a serious charge against a member of the public, in my view he should normally do so by moving a substantive motion framed in precise terms and capable of being answered by any honourable member choosing to defend the person under attack.

PD 12/11/1970, pp 7717-8

SPEAKER ELLIS: The Honourable Member has asked what steps will be taken to preserve the rights of Honourable Members and citizens outside the Parliament. I have said before that it is the right of every Honourable Member, under Privilege and subject only to observance of the forms and practices of the House itself, to exercise free speech. If a Member abuses that right he does so at his own risk and at the risk of incurring not only the displeasure of the public but also the censure of the House itself. If under cover of privilege any Honourable Member, without proper justification is guilty of attacking Honourable Members within the House, or citizens outside the Parliament who have no right of audience on the floor of the House, that is a matter for the House to deal with and not one for the Speaker. In a bad case, of course, the Speaker will, as I have done from time to time and as I have already done once this session, invite the attention of the Honourable Member making the attack to the seriousness of his actions and ask him whether he feels a compelling necessity to pursue that line. I can only appeal to all Honourable Members to exercise moderation in the way in which they use the right of free speech in this Chamber. It does not lie within my power to take any action against any Honourable Member who abuses that right: that is something for the House itself to deal with and also for the public; which in one way or another can express its displeasure at an offending Member.

PD 24/08/1972, p 292

Standing Order 91 (former SO 101) – Privilege – Request to Publish *In Camera* Evidence

SPEAKER MURRAY: brought to the attention of Members that during the last session the House had agreed to a resolution on 26 October, 1995, whereby the Royal Commission was granted access to certain *in camera* evidence taken before the Select Committee upon Prostitution. The resolution provided in part for the Royal Commission to seek the leave of the Legislative Assembly before admitting into evidence before the Royal Commission any evidence taken by the Select Committee and that Officers of the Royal Commission had subsequently viewed the evidence in question and various portions were photocopied for use by the Commission.

The Speaker further informed the House that by letter dated 14 October, 1996, the Royal Commission had sought leave to make public the fact that certain evidence had been given to the Committee and to tender the Committee transcript except for certain words. As a consequence the Speaker had sought advice from the Crown Solicitor regarding the potential breach of Article 9 of the *Bill of Rights* whereby evidence taken before the Select Committee could be brought into question. The Speaker had also sought further clarification from the Royal Commission on two occasions regarding the intended use of the material in question and that the Crown Solicitor also had advised on those responses.

The Speaker noted that this matter was of deep concern to him from the perspective of the operation of committees appointed by the Parliament. For committees to operate effectively, witnesses who give evidence *in camera* must be assured of continuing confidentiality of that evidence unless the House itself resolves to make it public for its own purposes in special circumstances.

The Speaker advised the House that the Crown Solicitor was of the opinion that from the material available to him and from the responses from the Royal Commission the action proposed by the Commission would breach Article 9 of the *Bill of Rights*. The Speaker also stated that parliamentary convention and law prevent the House from granting a waiver to this privilege other than to allow the adducing into evidence the material in question purely for the purpose of establishing the fact that the evidence was given.

The Speaker stated that it was a matter for the House to determine what action, if any, it wished to take. Upon which the Leader of the House moved, by leave, That this House, being of the opinion that to grant leave to the Royal Commission into the New South Wales Police Service for any evidence taken before the Select Committee upon Prostitution to be adduced into evidence before the Royal Commission has real potential to breach Article 9 of the *Bill of Rights*, and as the House has no authority to waive its privilege in this regard, declines to grant leave as requested.

VP 26/10/1995, pp 361-2
VP 27/11/1996, 686-7
PD 27/11/1996, p 6738

Standing Order 91 - Matter of Privilege or Contempt Suddenly Arising

SPEAKER HANCOCK: ...In recognition of the necessity for members and the House to be able to meet and debate matters unimpeded by threats or constraints, Standing Order 91 permits members to interrupt business when a breach of privilege or a contempt suddenly arises. Generally, matters of contempt or breach of privilege involve disobedience to general orders or rules of the House, disobedience to particular standing orders, indignities offered to the character or proceedings of the Parliament, assaults or insults upon members or reflections upon their character or conduct in Parliament, or interference with officers of the House in the discharge of their duties.

It is expected that a member would be able to quickly establish to the satisfaction of the Chair whether there is a prima facie breach of privilege or a contempt. There is no requirement for the Chair to allow a member to speak for the full 10 minutes if it is clear from the outset that there is a prima facie case or that one does not exist. The Speaker has to be able to form an opinion, first, that the matter is suddenly arising, second, that it relates to a matter then before the House and, third, that it should be dealt with at the earliest opportunity. I make it clear that it is not a breach of the standing orders, nor a matter of contempt or privilege, if a member is dissatisfied with an answer provided during question time. I advise members also that, in the usual course of events, should a matter of privilege or contempt be raised during question time, consideration will be deferred until the conclusion of question time.

It is essential to establish privilege or contempt that the member must also show how the matter complained of fairly and reasonably interferes with the operation of the House or hinders the member in the discharge of their duties. After hearing the member the Chair has the option of allowing the member's motion to be moved immediately, placing it on the Business Paper with precedence, or of reserving any decision for later in the sitting or on a subsequent sitting day. Given the high threshold for establishing contemporaneity, urgency and impediment, it is expected that the vast majority of matters of contempt or breach of privilege should be dealt with in accordance with Standing Order 92. This standing order enables a member to write and ask the Speaker to determine within 14 days whether a motion to refer the matter to the Standing Committee on Parliamentary Privilege and Ethics should take precedence under the standing orders. I advise members that they are at liberty to place a notice that relates to a matter of contempt or privilege on the Business Paper, but that such notice does not attract precedence.

PD 23/08/2011, p 4414

Standing Order 93 - Raising Points of Order

SPEAKER HANCOCK: Considered statement relating to the raising of points of order during question time. Standing Order 93 states:

> A member may at any time raise a point of order relating to a breach of the standing orders or the practice of the House …

This standing order gives all members the right to make his or her point of order at any stage of the proceedings without interruption until disposed of by the Chair. The standing order does not, however, provide members with an opportunity to raise points of order that seek only to interrupt the member speaking or to debate the matter. Members who to continue to interrupt the member with the call by taking alleged points of order will find themselves out of the Chamber. Points of order must relate to a breach of a particular standing order or practice of the House and be succinct and clearly enunciated as such, and argument is not and will not be permitted.

I refer all members to Standing Order 94, which states that "only the question of order" shall be stated to the Speaker. As Speaker I am therefore obliged to ensure that the right to raise a point of order is not misused to unduly interrupt the proceedings of the House. According to Erskine May's Parliamentary Practice, interruptions that are not valid points of order "should not be allowed to interrupt debate".

I remind members that points of order that are of a frivolous nature or of dubious validity are disorderly and that breaches of the standing orders by members repeatedly raising spurious points of order may lead to the Chair presuming that their seeking the call is not being made on serious grounds. I remind members also that failure or tardiness in resuming their seat when specifically directed to do so by the Chair is in itself a breach of order, the consequence of which is the offending member's removal from the House.

PD 19/09/2012, p 15458

Standing Order 95 (former SO 107) - Chair cannot enter into a controversy through the media

SPEAKER WEAVER: During question time, Speaker asked whether he had seen a statement in the morning's press. The Speaker asked another member whether he had stated to the press that..."I was overlooked every time I sought the call from the Speaker". The Member replying that he did, the Speaker made a considered statement deprecating the member for using the press to criticise the Chair:

> "I would point out to Members that there are two courses to pursue when an hon. Member has a difference with the Chair or thinks that he is not receiving fair treatment from the Chair. One is provided by the Standing Order that allows an hon. Member to move a motion in this House with a view to correcting any action by the Chair. The other course is the mean, despicable and cowardly method of going to the press and making a statement to it, as it is well known that the Speaker cannot enter into a controversy through the channels of the press."

The Speaker then addressed the Members claims and concluded by saying that:

> "The statement by the hon. Member and the innuendo it contains is completely and absolutely without foundation, and I suggest to the hon Member that he should have adopted the more straightforward and manly course, if he was suffering some disappointment, of either coming to me or moving a motion against the Chair. His action in going to the press is most unseemly and most un-parliamentary. It would not occur in any British Parliament and would be adopted only by an irresponsible member.....I wish I were on the floor of the House so that I could say to the House what I actually think, but putting it mildly I will only say now that the hon. Member's action is undignified, un-parliamentary and reprehensible in the last degree."

The Member attempted to make a personal explanation, claiming that the Speaker had left a record for the Acting Speaker of who was to be called in his absence, and his name did not appear on that record. The Speaker ordered the Member to resume his seat, stating that he could allow untruths to be told about the Chair.

PD 03/04/1940, p 7719

Standing Order 99 (former SO 111) - Placing and disposal of business - lapsed notices

SPEAKER MURRAY: At the commencement of today's sitting the honourable member for Hawkesbury took a point of order in relation to certain proceedings that took place in the House yesterday. In essence the member put the proposition that business with precedence, notice of motion No. 1, no confidence in the Minister for Urban Affairs and Planning; notice of motion No. 2, no confidence in the Minister for Police; and notice of motion No. 3, no confidence in the Speaker, on the business paper for yesterday, had been incorrectly called on and that consequently notices of motions Nos 1 and 2 should not have lapsed with the member in charge, that is the Leader of the Opposition in both cases, not being present in the House. Having had an opportunity to examine the record I am now in a position to make the following observations and ruling. The situation is governed by Standing Order 123, no confidence in Minister, and Standing Order 123A, no confidence in Speaker, which both provide, inter alia, that:

> Such notice shall take the place of and be called upon at the time for consideration of Matters of Public Importance at the next sitting of the House after the notice was given.

These standing orders assume that there will be only one such motion dealt with at each sitting. This is reinforced by the fact that Standing Order 121, Matters of Public Importance, provides for only one matter of public importance to be dealt with at each sitting. When the new standing orders were agreed to in 1994 provision was not specifically made for determining the status of part-heard, that is, adjourned motions which take the place of matters of public importance. The practice has developed whereby such motions are placed on the business paper under the heading "Business With Precedence, Orders of the Day" and they are called on again on the next sitting day in the routine of business for matters of public importance with precedence of notices of motions in the same category.

A situation arose in the House yesterday evening whereby on 15 October 1996 the House had agreed to treat the censure motion of the Minister for Urban Affairs and Planning in a manner different from that which I have described. On 15 October the House agreed to a motion that this censure motion be dealt with immediately following the conclusion of the no confidence motion of the Minister for Agriculture. The motion in respect of the Minister for Agriculture was duly dealt with last night and, in accordance with the wishes of the House, the motion in respect of the Minister for Urban Affairs and Planning was called on. Standing Order 111 states:

> Notices of motions shall take precedence of orders of the day, and if called upon must be moved, withdrawn, or postponed in the order in which they appear on the Business Paper or lapse.

In accordance with that standing order I called on the Leader of the Opposition to move his motion. He was not present in the Chamber and therefore the notice lapsed.

The routine of business in Standing Order 110 states that following matters of public importance on each sitting day, the House shall proceed to the consideration of business with precedence. The business paper has listed notices of motions and orders of the day of censure and no confidence as "Business with Precedence". When the motion of no confidence of the Minister for Urban Affairs and Planning could not proceed because the Leader of the Opposition was not present, I immediately called on the next notice of motion, which was against the Minister for Police. The House did not object to my undertaking that procedure. This notice similarly failed to proceed because the Leader of the Opposition was not present.

The next notice was then called, which was a motion of no confidence of the Chair. The honourable member for Gosford being present to move his motion did so and the debate continued until interrupted by the adjournment of the House at 10.30 p.m. As I have stated earlier, the standing orders do not make any specific provision about the ordering of part-heard censure or no confidence motions. In view of this, I intend to ask the Standing Orders and Procedure Committee immediately to consider this matter and the related issue of multiple motions being placed on the paper and being part heard, thus denying members from both sides the opportunity to raise matters of public importance. In addition, in the interim, I propose that censure and no confidence motions - except no confidence motions in the Government - will not appear on the business paper under the heading "Business with Precedence" but will have a separate category of "Business taking the place of Matters of Public Importance". This should avoid confusion in the future.

In respect of the notices that have lapsed, the motion against the Minister for Urban Affairs and Planning, and Minister for Housing has been legitimately dealt with in accordance with a previous decision of the House. It is difficult to restore the no confidence motion in the Minister for Police to its place in the business paper in view of the fact that the no confidence motion in the Chair has been moved by the member for Gosford and is part heard as an order of the day and, as such, is in possession of the House. It is, of course, open to the Leader of the Opposition to give fresh notices today, if he wishes. In respect of the point of order of the honourable member for Hawkesbury relating to pairing, he would

understand that the Chair is not privy to any private arrangements made between the Whips and other members of the House.

Standing Orders 123 (No confidence in Minister) and 123A (No Confidence in Speaker) provide that such motions are called on for consideration at the time for matters of Public Importance.

The censure motion of the Minister was subject to a previous suspension of standing orders and thus was correctly called on in accordance with the previous resolution of the House.

The Standing Orders do not make any specific provision about the ordering of part-heard censure/no confidence motions. The notice was called on in order and no objection was taken at the time. When the notice lapsed, the next notice (of no confidence in the Speaker) was called on and moved by the Member in charge (Opposition).

PD 30/10/1996, pp 5524, 5549

Standing Order 100 (former SO 112) - Placing and disposal of business - call over

SPEAKER MURRAY: said that, with the consent of the House, he intended to adopt a new procedure in relation to the call over of General Business--Notices of Motions (General Notices).

> "As there are now 146 General Business Notices of Motions (General Notices) on the business paper I propose, with the consent of the House, to continue the call over only until 10 members have indicated that their motions are ready to proceed. That procedure will not, of course, prevent members from moving motions to reorder business at the conclusion of the call over."

VP 16/09/1998, p 848

Standing Order 100 (former SO 112) - Notice standing in the name of a former member

SPEAKER ROZZOLI: drew the attention of the House to the Notice of Motion and the two Orders of the Day of General Business (for Bills) on the Business Paper for Friday 10 April 1992 which stood in the name of Dr Metherell the then member for Davidson. The Speaker then informed the House that on the Business Paper for today he had ordered the references to Dr Metherell to be removed as a consequence of his resignation.

The Speaker advised that the Notice of Motion had been expunged. This was in accordance with the ruling of Speaker Kelly on Tuesday 15 April 1986 when he ordered the Notices of Motions to be struck from the Business Paper. The Speaker ruled that the reasons given

then were applicable in this case, namely: that they could not be withdrawn by the former member; it could not be moved by any other member; and the House was not in possession of the motion as it had not been proposed from the Chair.

The Speaker stated that he had directed that the Orders of the Day should remain on the Business Paper but with the name of the member who had moved them deleted as the bills had been introduced when they were in the possession of the House and the mover was no longer a member of the House and therefore could not be proceeded with further.

(a) Standing Order 113(C) which stated that a motion shall not be withdrawn in the absence of the member except with his authority. In this case that authority cannot be obtained as the member in question had resigned;

(b) Deputy Speaker Hedges ruling of 26 September 1933 when he ruled that while it was competent for one Minister to move a motion on behalf of another Minister it was not competent for one member to move a motion on behalf of another member (Votes and Proceedings 1933-34 p. 70).

(c) Recent precedent in the Commonwealth House of Representatives when a private member resigned an Order standing in his name remained on the Business Paper.

The Speaker concluded by advising the House that with regard to the Notice of Motion any member was able to give a fresh notice. Similarly for the two bills fresh notice could be given for the introduction or any appropriate procedural motion for the suspension of Standing and Sessional Orders to facilitate the disposal (by discharging the Order of the Day and withdrawing the bills) or progressing of these bills by appropriate order of the House.

VP 29/04/1992, pp 259-60 , PD 29/04/1992, pp 3016-7
see similar rulings Speaker Murray PD 31/03/1998, p 3436; VP 31/03/1998, p 426
Speaker Murray PD 10/10/2001, p 17469; VP 17/10/2001, p 1502

Standing Order 105 (former SO 117) - Interrupted Agreement in Principle Speech (formerly Second Reading Speech)

SPEAKER ROZZOLI: ruled that where a second reading speech of the mover of a private member's bill is interrupted at 10.00 a.m. the resumption of the interrupted speech will appear on the business paper on the next day as having precedence of notices of motions of General Business (for Bills).

Accordingly the Speaker directed that the business paper for today be corrected to reflect the ruling.

PD 22/04/1993, p 1462
VP 22/04/1993, p 162

Standing Order 108 (former SO 119) - Private Members' Statements

ASSISTANT SPEAKER FRASER: Members on both sides of the House are generally tolerant about the matters that are raised during private members' statements. ... When making private members' statements, members should comply with the relevant rulings of former Speakers Rozzoli and Kelly. If members wish to raise matters not pertaining to their electorate, they can do so by way of substantive motion. I ask the Government and Opposition Whips to inform members that in private members' statements they should only speak to matters that relate to their electorates. If members do not comply with the rulings of the House they will be called to order.

PD 31/5/2017, p 63

SPEAKER MURRAY: I am sure that all honourable members will be interested in this statement. The concept behind private members' statements has always been the provision to members of an opportunity to bring to the attention of the House matters of particular concern to their electorates and, as such, they were originally restricted to matters of purely local import. However, over the years members have used private members' statements to touch on issues other than local ones. That has been allowed so long as the matter raised affected a member's constituents or was brought to the member's attention by a constituent.

Despite this relaxation of the original rule there are still certain matters that will always be outside the scope of a private member's statement. For example, the Chair has noted of late that private members' statements are being used wrongly as vehicles to make attacks on other members, which are not permissible other than by way of a substantive motion. One of the tenets underlying the privilege of freedom of speech in the Chamber is that serious criticism of other members or persons outside the Parliament should not be made in passing but should be the subject of a substantive motion. It is also a longstanding rule that reflections on the judiciary are not permitted. This right of free speech should always be exercised with restraint.

Other matters outside the scope of a private member's statement include the announcement of government policy or other initiatives. Ministers should not use private members' statements to raise policy issues that fall within their portfolio responsibilities except when relevant in replying to matters raised by private members. Equally, shadow Ministers should not use private members' statements to raise policy issues related to their shadow portfolio responsibilities. There are other more suitable vehicles available to members for debating legislation or commenting on policy matters. Private members' statements should not be used to anticipate or continue debate on a matter in this House or in another place. Members will agree that private members' statements are useful vehicles for raising issues of both local and broader interest. I ask members to ensure that their statements comply with this ruling.

PD 04/09/2001, p 16297
VP 04/09/2001, p 1409

SPEAKER MURRAY: I wish to draw the attention of members to a private member's statement given to the House by the honourable member for Blacktown on Thursday 28 October 1999 in which the member reflected on the character and conduct of the retiring Commissioner of the Independent Commission Against Corruption, the Hon. Barry O'Keefe, AM, QC. In doing so I wish to strongly remind members of the longstanding practice of this House specifically in relation to reflections on individuals who are not members of this House and, more generally, in relation to private members' statements.

The matter of reflecting adversely on individuals during private members' statements has been the subject of two detailed Speaker's rulings in the past. Both rulings, by Speaker Rozzoli on 2 May 1989 and more recently by myself on 6 May 1997, have upheld the following principle:

…It is a breach of parliamentary convention, and possibly an abuse of parliamentary privilege, to reflect other than by way of substantive motion on the character or conduct of persons outside the Parliament who have no opportunity to speak for themselves in rebuttal.

Both rulings stated that a private member's statement does not provide a member with sufficient time to articulate a properly presented case containing serious allegations and that matters of such consequence should be raised by way of a substantive motion. A substantive motion provides the member with more speaking time and also provides other members with an opportunity to speak in defence of the person concerned. Both rulings also asserted that freedom of speech is an essential privilege of the Parliament and that it is the responsibility of every member to avail himself or herself of this freedom in a way that respects the rights of individuals who do not enjoy the same privilege and in a way that does not damage the standing of the House.

On this occasion I think it is relevant also to remind all members that the Independent Commission Against Corruption is an important watchdog in this State with responsibility to expose corruption and promote high ethical standards in public institutions. It is a function that enjoys a high degree of public support. By deliberate enactment of the Parliament, Ministers and members of Parliament are subject to the powers of ICAC like any other person holding public office. Personal comment on ICAC by members, whether directly or indirectly, which reflects on the character or conduct of its office holders will do nothing to enhance the public standing of this House or its members.

Some members may wish to argue that the office of the Commission of the Independent Commission Against Corruption enjoys special powers and privileges granted by this Parliament and therefore the commissioner is not like an ordinary member of the public. For this reason the Parliament has provided for a special committee to oversee the operation of ICAC. The appropriate means for a member with concerns about the operation of ICAC or the conduct of the commissioner is to seek to refer those concerns for inquiry by the joint Committee on the Independent Commission Against Corruption by way of a substantive motion. The motion itself would be open to debate, as would the results of any inquiry.

Finally, the House has observed the practice of confining private members' statements to matters pertaining to members' electorates or constituents, although the Chair has consistently permitted members to cover wider issues of public policy where a clear connection with the member's constituency is established. The Chair does not intend to depart from this practice in the future.

PD 09/11/1999, p 2433
VP 09/11/1999, p 197

SPEAKER MURRAY: drew the attention of members to a private member's statement given to the House by the honourable member for Northcott on Wednesday 23 April 1997 during which the member personally attacked Mr David Hill under the guise of a statement about State Rail Services.

The Speaker stated that in drawing the attention of members to this he wished to strongly remind members of the ruling given by Speaker Rozzoli on 2 May 1989 (Hansard 1988-90, page 7148) regarding the content of matter to be raised by way of a private member's statement.

The Speaker stated that in that considered ruling Speaker Rozzoli had said:

> "The point of order is often taken that it is a breach of parliamentary convention, and possibly an abuse of parliamentary privilege, to reflect other than by way of substantive motion on the character or conduct of persons outside the Parliament who have no opportunity to speak for themselves in rebuttal."

The Speaker stated that Speaker Rozzoli had also added:

> "Freedom of speech is essential to the work of Parliament and it is the responsibility of every member that he or she use this freedom in a way that does not damage those who do not enjoy that privilege and in a way that does not damage the good name of the House. Though the member has an undoubted right of free speech, that right and privilege has attaching to it a responsibility. If that privilege is abused, the member must be willing to accept the displeasure of the House and possible public odium."

The Speaker reiterated Speaker Rozzoli's ruling, namely, that certain times are more appropriate than others to raise the types of matters raised by the member for Northcott. It was most inappropriate for members to make such private members' statements when a member has only 5 minutes in which to speak. If the matter raised is of such consequence then it should be done by way of a substantive motion where the member has more speaking time and an opportunity is given for other members to defend the attacked person. The Speaker further stated that in future he would rule such statements out of order.

PD 06/05/1997, p 8077
VP 06/05/1997, p 833

SPEAKER TORBAY: I am concerned that in recent times the scope of private members' statements has strayed beyond the principles which apply to this procedure.

There have been many rulings given by former Speakers on the types of matters that can be raised during a private member's statement. The procedure is of limited scope in that its principal purpose is to provide members with a mechanism to raise matters of particular concern to their electorates. In limited cases, members are also able to use private members' statements to touch on issues other than local ones so long as the matter raised affects constituents directly or the member is raising an issue that has been brought to the member's attention by a constituent, provided the issue is related to the electorate.

However, there are some matters that are clearly outside the scope of a private member's statement. For example, members cannot use private members' statements as a vehicle to attach other members as such attacks are only permitted by substantive motion. While the comments made by the member for Terrigal related to a former member of the other place there were more appropriate vehicles by which to raise the particular issue and as such were outside the generally accepted scope of a private member's statement. Private member's statements should not be used to make attacks on persons outside of Parliament.

Private members' statements should not be used to continue debates on issues raised during question time or to reflect on answers that have been given or to continue debate on matters before the House or already concluded. Nor should they be used to attach the Government in relation to State issues at large as there are more appropriate procedures to do this such as motions accorded priority, general business motions, and in serious cases, motions of censure or no confidence.

By way of general comment, I remind members that although they do have the privilege of freedom of speech in this place, this right also comes with certain responsibilities. Members need to be responsible in its use and be aware of the possible damage that can be done to those who do not enjoy that privilege and who have limited opportunity for response. Members also need to bear in mind the damage to the institution of Parliament that can ensue through the irresponsible use of the privilege of freedom of speech.

PD 24/06/2010, p 24782
VP 24/06/2010, pp 2202-3

Standing Order 108 - Procedure for General Business Notices of Motions and Private Members' Statements

SPEAKER TORBAY: It has been brought to my attention that on Thursday 15 November 2007 there was some confusion as to what is the correct procedure at 4.15 p.m. on Thursdays when business is interrupted for the giving of general notices and private members' statements. Standing Order 108 clearly provides that on Thursdays the business before the House is interrupted at 4.15 p.m. unless a division is in progress or proceedings under the guillotine are in progress. When a division has been called for prior to 4.15 p.m. but is concluded after 4.15 p.m., the business before the House, if it is a motion accorded priority

or a matter of public importance, will lapse. That will occur regardless of whether the question has been proposed on the substantive motion before the House. As noted on page 126 of *New South Wales Legislative Assembly Practice, Procedure and Privilege*:

> If the debate on a motion accorded priority is interrupted pursuant to standing or sessional orders, such as at 4.15 p.m. on Thursdays for the giving of general business, general business notices and private members' statements, the motion lapses. If a division has occurred on an amendment to the motion and the division concludes after 4.15 p.m. there is no provision for the House to then express a view on the original motion.

The question being put on the original motion is not consequential upon the amendment being disposed of; it is a different proceeding. That is the approach that was taken by the Deputy-Speaker on 8 November 2007. The question on the original motion can only be put after 4.15 p.m. with the concurrence of the House or by suspending Standing Order 108. On Thursday 8 November 2007 the Deputy-Speaker sought the concurrence of the House to put the question on the original motion and concurrence was not given. Accordingly, the motion lapsed.

I acknowledge that from time to time the House has put the question on the original motion after 4.15 p.m. on Thursdays, but to ensure that the standing order is applied correctly the practice set out in the *New South Wales Legislative Assembly Practice, Procedure and Privilege* will apply. However, should the House wish to express an opinion on the original motion the standing orders will need to be amended either permanently or by way of sessional order.

PD 29/11/2007, p 4759

Standing Order 109 (former SO 120) - Motions Accorded Priority (formerly Urgent Motions)

SPEAKER AQUILINA: Under the standing orders members are permitted to make statements of up to five minutes to assist the House in determining which motion should be given priority. Part of the process of establishing priority is outlining why a motion should receive immediate attention and is more urgent than the other proposed motion.

When members take points of order about a member not establishing the urgency of a motion, those points of order relate to members debating the substance of the motion rather than arguing why it should have priority over the alternative motion. Such points of order comply with the standing order. I remind all members that when they are arguing the priority of an urgent motion, although they can make passing mention of substantive matters in relation to that motion, principally they should seek to establish why the motion should be given priority.

PD 04/04/2006, p 21992

Standing Order 109 - Motions Accorded Priority

SPEAKER HANCOCK: Considered Statement relating to the sessional order amending standing order 109 concerning debate on motions accorded priority:

"Understanding and sessional orders, two members have the opportunity to make a statement outlining why their motion should be accorded priority. The sessional order adopted yesterday provides, in paragraph (4)(a) that:

'...no points of order regarding the scope or substance of the notice will be entertained during the 3 minutes provided for the statement'

Over recent years Speakers have allowed members to make some reference to the substance or subject matter of their notice when establishing priority. Indeed, it is my view that in order to establish priority a member must refer to the substance of the motion. The new sessional order reflects a desire to prevent the raising of spurious and time-wasting points of order which allege that a member is debating the substance of their motion rather than establishing priority. The time for statements is limited and best utilised by orderly debate on the question to be determined.

Members need to note that the new sessional order does not give a member free rein to comprehensively debate their motion in the course of their three-minute statement. While brief reference to the substance of a motion will be permitted, the Chair will draw a member back if the content of his or her statement exceeds the scope necessary to determine priority of one motion over another. Points of order will also be entertained if debate strays into attacks on other members, offensive words or other such overt, serious disorder."

PD 15/02/2012, p 8295

Standing Order 111, 112, 113 (former SO 122, 123, 123A) - Business taking the place of Matters of Public Importance

SPEAKER MURRAY: "At the commencement of today's sitting the honourable member for Hawkesbury took a point of order in relation to certain proceedings that took place in the House yesterday. In essence the member put the proposition that business with precedence, notice of motion No. 1, no confidence in the Minister for Urban Affairs and Planning; notice of motion No. 2, no confidence in the Minister for Police; and notice of motion No. 3, no confidence in the Speaker, on the business paper for yesterday, had been incorrectly called on and that consequently notices of motions Nos 1 and 2 should not have lapsed with the member in charge, that is the Leader of the Opposition in both cases, not being present in the House. Having had an opportunity to examine the record I am now in a position to make the following observations and ruling. The situation is governed by Standing Order 123, no confidence in Minister, and Standing Order 123A, no confidence in Speaker, which both provide, inter alia, that:

> Such notice shall take the place of and be called upon at the time for consideration of Matters of Public Importance at the next sitting of the House after the notice was given.

These standing orders assume that there will be only one such motion dealt with at each sitting. This is reinforced by the fact that Standing Order 121, Matters of Public Importance, provides for only one matter of public importance to be dealt with at each sitting. When the new standing orders were agreed to in 1994 provision was not specifically made for determining the status of part-heard, that is, adjourned motions which take the place of matters of public importance. The practice has developed whereby such motions are placed on the business paper under the heading "Business With Precedence, Orders of the Day" and they are called on again on the next sitting day in the routine of business for matters of public importance with precedence of notices of motions in the same category.

A situation arose in the House yesterday evening whereby on 15 October 1996 the House had agreed to treat the censure motion of the Minister for Urban Affairs and Planning in a manner different from that which I have described. On 15 October the House agreed to a motion that this censure motion be dealt with immediately following the conclusion of the no confidence motion of the Minister for Agriculture. The motion in respect of the Minister for Agriculture was duly dealt with last night and, in accordance with the wishes of the House, the motion in respect of the Minister for Urban Affairs and Planning was called on. Standing Order 111 states:

> Notices of motions shall take precedence of orders of the day, and if called upon must be moved, withdrawn, or postponed in the order in which they appear on the Business Paper or lapse.

In accordance with that standing order I called on the Leader of the Opposition to move his motion. He was not present in the Chamber and therefore the notice lapsed. The routine of business in Standing Order 110 states that following matters of public importance on each sitting day, the House shall proceed to the consideration of business with precedence. The business paper has listed notices of motions and orders of the day of censure and no confidence as "Business with Precedence". When the motion of no confidence of the Minister for Urban Affairs and Planning could not proceed because the Leader of the Opposition was not present, I immediately called on the next notice of motion, which was against the Minister for Police. The House did not object to my undertaking that procedure. This notice similarly failed to proceed because the Leader of the Opposition was not present.

The next notice was then called, which was a motion of no confidence of the Chair. The honourable member for Gosford being present to move his motion did so and the debate continued until interrupted by the adjournment of the House at 10.30 p.m. As I have stated earlier, the standing orders do not make any specific provision about the ordering of part-heard censure or no confidence motions. In view of this, I intend to ask the Standing Orders and Procedure Committee immediately to consider this matter and the related issue of multiple motions being placed on the paper and being part heard, thus denying members from both sides the opportunity to raise matters of public importance. In addition, in the interim, I propose that censure and no confidence motions - except no confidence motions

in the Government - will not appear on the business paper under the heading "Business with Precedence" but will have a separate category of "Business taking the place of Matters of Public Importance". This should avoid confusion in the future.

In respect of the notices that have lapsed, the motion against the Minister for Urban Affairs and Planning, and Minister for Housing has been legitimately dealt with in accordance with a previous decision of the House. It is difficult to restore the no confidence motion in the Minister for Police to its place in the business paper in view of the fact that the no confidence motion in the Chair has been moved by the member for Gosford and is part heard as an order of the day and, as such, is in possession of the House. It is, of course, open to the Leader of the Opposition to give fresh notices today, if he wishes. In respect of the point of order of the honourable member for Hawkesbury relating to pairing, he would understand that the Chair is not privy to any private arrangements made between the Whips and other members of the House."

VP 30/10/1996, pp 537, 543
PD 30/10/1996, pp 5524-6, 5549-50

Standing Order 116 (former SO 125) - Disallowance of Statutory rules - Court Practice Notes

SPEAKER ROZZOLI: informed the House that he had concluded that the notice of motion to disallow a Practice Note of the Supreme Court did not fall within the ambit of the term "statutory rule" as set out in section 39 of the Interpretation Act 1987, as it was not made by the Governor or required to be approved or confirmed by the Governor.

The Speaker said that although they may address matters which could be subject of Rules of Court, Practice Notes are not Rules. They are issued by the Chief Justice in exercise of the Court's inherent power to give directions on matters of practice and procedure, a power not displaced by sections 122-124 of the Supreme Court Act 1970 which empower the Rules Committee to make those rules which become "statutory rules".

Practice Notes do not have the force of law although they are no doubt persuasive with practitioners in the court. The view expressed to the Speaker that the scope of some recent Practice Notes, including the one subject of this motion have traversed matters of practice and procedure which should more properly be in the form of Rules and therefore subject to the scrutiny of the Parliament.

The Speaker did not to seek to comment on the assertion other than to say that this Parliament had no power to change the law by resolution. The law relating to Rules of Court is governed by sections 122-124 of the Supreme Court Act 1970. If the Parliament wished to place within scrutiny matters not currently in the Act it was within its province to do so by amendment to that Act.

The Speaker accordingly ruled the motion out of order.

VP 18/11/1993, p 580; PD 18/11/1993, p 5703

Standing Order 121 - Petitions - Contents of petition

SPEAKER HANCOCK: I draw members' attention to the standing orders that set out the rules for petitions. In recent weeks a number of petitions have been received that breach the standing orders on the permitted content and form of petitions. Standing orders 120 to 122 envisage that citizens will generate petitions for the purpose of respectfully bringing a concern or grievance to the notice of the House. The lodging of a petition is a formal proceeding, leading in some cases to a mandatory ministerial response or a debate in the House.

There have long been distinct rules governing the form and content of these documents. For example, a petition must not contain irrelevant statements, and there is a clear intent that members, who have ample opportunity to raise matters in the House, should not themselves be petitioners about general matters. Also, petitions that include headings that refer to individual members, or which contain photographs of a member or similar information judged as "additional" to the subject of the petition are unlikely to conform to the rules of the House. In fact, I inform members that many of those petitions have been rejected.

Members are free to circulate petitions of all types in their electorates that can be forwarded directly to Ministers, but if they are out of order they will not be able to be tabled in the House. Petitioning the Parliament is an ancient and important part of parliamentary proceedings as an expression of public views. However, some aspects of the rules require modernisation and the standing orders may well be reviewed by the Standing Orders and Procedures Committee in the near future.

VP 7/8/2014, p 2294
PD 7/8/2014, p 30211

Standing Orders 122 - Petitions must not contain

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VP 7/8/2014, p 2294
PD 7/8/2014, p 30211

Standing Order 126 (former SO 135) - Questions on Notice - late answers - out of order to ask why

SPEAKER ROZZOLI: on why a question previously asked remained unanswered would in future not be permitted.

> "I wish to rule upon the increasing practice of members asking the question, "What reasons are there for the delay in answering question upon notice No. X concerning a particular matter?"
>
> As Ministers are not compelled by standing orders to answer questions, and as the Chair can only direct on the relevance of an answer, the aforementioned style of question could in turn be the subject of a question asking why it had not been answered. This could be open to abuse and could go on ad infinitum. Further, the style of the question does not fall within the ambit and spirit of Standing Order 76 as "relating to public affairs" by virtue of the discretion vested in the Minister as to when and if a reply is given.
>
> I would, however, at this point respectfully put to all Ministers that more prompt responses to questions would alleviate much of the problem which currently exists. I therefore propose to rule out of order the aforementioned style of proposed question not yet published. However, I intend to refer the whole matter to the Standing Orders Committee for its further deliberation."

PD 24/05/1990, p 4622

Standing Order 126 – Questions addressed to the Leader of the House

SPEAKER TORBAY: made a considered ruling on the Leader of the House and the sessional order pertaining to his role:

> "Yesterday in question time the member for Murrumbidgee sought to ask the Leader of the House a question. The member asserted that the sessional order adopted by the House provided for questions to be directed to the Leader of the House. I accept that the sessional order provides that all standing orders that apply to Ministers apply also to the Leader of the House, including standing orders relating to questions seeking information. However, those questions must be confined to areas for which the Leader of the House is responsible, such as questions about the ordering of business before the House. The sessional order was adopted for procedural purposes to enable the Leader of the House to arrange Government Business and to move motions that cannot be moved by Parliamentary Secretaries, such as the motion for the adjournment of the House. Accordingly, questions directed to the Leader of the House should be limited to that extent.

As all members are aware, the purpose of question time is primarily to obtain information from Ministers. In accordance with the standing orders, and as noted in Erskine May's *Parliamentary Practice* , questions addressed to Ministers should relate to the public affairs with which they are officially connected, to proceedings pending in Parliament, or to matters of administration for which they are responsible. However, the Leader of the House, in common with other Parliamentary Secretaries, does not have any government portfolio responsibilities and cannot be asked questions about matters related to the administration of government or public affairs to which those matters are officially connected. The question asked yesterday did not relate to the role of the Leader of the House and was correctly redirected to the Premier. If it is the wish of the House the sessional order could be amended to clarify the situation."

PD 28/06/2007, p 2139

Standing Order 126 – Questions Seeking Information

SPEAKER O'DEA: These are the guidelines I want to apply in relation to the use of the additional words or phrases "related matters", "other matters" and "are there any alternative policies" often added at the end of questions without notice.

As stated by my predecessors, the purpose of questions should be to seek factual information, press for action, and/or hold the Government to account. The use of such additional phrases is open-ended. Instead of seeking information, they invite Ministers to pass comment or debate the matter, which is contrary to Standing Order 130.

The additional words also invite multiple questions and answers in the one question, or ask about alternatives that are not within a Minister's portfolio. As such, I ask that members be mindful of how they frame their questions. In particular, members should endeavour to ask concise questions that do not specifically invite comment on or explanation of alternative policies. If needed, I will invite members using these additional words to rephrase their questions.

PD 20/8/19, p 11

SPEAKER TORBAY: I wish to make a ruling in relation to the form and content of questions seeking information during Question Time.

Over a period of time questions seeking information of Ministers have contained references to "alternative policies" and/or "related matters" upon which points of order have been raised.

Standing Order 126 explicitly provides that questions seeking information may be asked by any member to Ministers relating to public affairs, matters under the Minister's administration and proceedings in the House for which they have carriage.

Under this standing order questions seeking information in relation to alternate policies are strictly out of order, as they are outside the scope of a Minister's responsibility.

This position is also reinforced in *Erskine May*, which states that "Questions are out of order if they relate to opposition party policies rather than to the government's responsibilities" (23rd edition, page 350).

In addition, standing order 128 provides that questions cannot be debated. Questions seeking information about a particular Government policy, and then in a second part enquiring as to alternate policies, clearly infringe the standing order as they are provoking debate rather than seeking factual information or pressing for action.

Whilst I will not allow questions to Ministers that directly seek comment on alternative policies, I will allow Ministers to make comparisons to alternative policies, including Opposition policies, or alternative proposals during the course of their answers.

On a similar note, I remind all members that it is the practice of this House that long questions, involving multiple questions within a single question, will be regarded as being out of order. This is consistent with previous rulings of the Chair that have required members to re-state their questions on the occasions that multiple questions have been asked within a single question. However, a question with multiple parts will be regarded as being in order, so long as the constituent parts are clearly related.

In order to avoid these pitfalls and to stay within the confines of the standing orders, I encourage all members to avoid asking lengthy and involved questions and to frame their questions in terms of seeking factual information or pressing for action.

On the other hand, Ministers are reminded that lengthy answers are undesirable and should be confined and be relevant to the subject of the question.

PD 24/03/2009, pp 13604-5

Standing Order 128 (former SO 137) – Rules for Questions

SPEAKER ELLIS: Before calling on questions, I take the opportunity of making an appeal to honourable members so to frame their questions without notice seeking information from the Government that the form and presentation of the subject matter will be in conformity with the rules and practice of the House. Standing Orders 76 to 80 provide that questions may be put to Ministers relating to public affairs and in putting any question, no argument or opinion shall be offered, nor any facts stated except as so far as may be necessary to explain such question. It is in the practice of the House, however, that the basic requirements and limitations placed upon questions with or without notice are to be found.

Questions should have relation to the public affairs and matters of administration for which the Minister is officially responsible. As the purpose of a question is to obtain information or press for action, it should be framed in concise and definite terms and not contain preamble or comment. It should not give information or be, in effect, a short speech, but should be of a genuinely interrogative character. It follows that questions should not contain arguments, inferences, imputations, epithets, or ironical expressions. A question should not be a hypothetical one or ask for confirmation of rumours or of press reports and a Minister should not be asked for an expression of opinion or for a legal opinion.

In most contexts, the expression “Is the Minister aware” is tantamount to giving information and accordingly should, if possible, be avoided. Similarly, the expression “is it a fact that” though perhaps technically in order, rarely serves any useful purpose, and may be avoided by other more straightforward devices. Questions without notice should be of an urgent nature and important character. If they are not in this category notice of the question should be given by placing it on the Questions and Answers paper. This particularly applies to questions which are long or involved or obviously require research, or may be answered only at considerable length. I remind honourable members also that on 2nd December, 1965, and again on 2nd March, 1967, I stated that I would not permit any question to be asked which mentioned the name of outside individuals and suggested that the actions of those individuals may not have been in the public interest. Other forms are available to an honourable member who wishes to canvass a matter of this nature. Honourable members are invited to confer with the Chair in private if they have any difficulty in formulating their questions.

Honourable members will recognize that an observance of these well-established rules will not only be of assistance to the Chair but will be of advantage to all honourable members, particularly as the limited time for the asking of questions will be conserved. If reasonable co-operation is not forthcoming from honourable members, it may become necessary for the Chair to adopt a hard line and disallow questions which do not conform to the requirements indicated. There is nothing new in any of the observations I have just made; they are long established rules of relating to questions without notice.

PD 23/08/1967, p 699

SPEAKER TORBAY: Following yesterday's proceedings, I wish to make a ruling in relation to the form and content of questions seeking information during Question Time.

There are a number of Speaker's rulings that state that the only valid purposes of a question are to seek factual information or press for action.

Standing order 128 explicitly states that questions should not contain argument, inference, imputation, epithets, ironical expressions, expressions of opinion, or hypothetical matter.

I remind all members that standing order 128 also states that questions cannot be debated and, therefore, should not be framed so as to provoke debate, which happens, for example, when an opinion or a provocative statement is offered up in the text of a question.

Whilst I have always extended a degree of latitude during Question Time, I will strictly enforce this standing order and only allow questions that seek factual information or press for action.

PD 02/04/2009, p 14480

Standing Order 129 – Answer Relevant

SPEAKER TORBAY: I refer to the matters of privilege raised by the member for Willoughby and the member for Burrinjuck earlier today in relation to answers provided by Ministers to written questions. The only standing orders that relate to answers to questions are Standing Order 129, which provides that an answer must be relevant, and Standing Order 130, which provides that in answering a member shall not debate the matter to which the question relates. There are no special rules for answers to written questions, as distinct from answers provided in the House.

The Speaker has not power to direct a Minister how to answer a question. While members may be of the view that it is disrespectful for a Minister to answer a question be referring the member to a response provided to a member in the other House, it is not a breach of the standing orders or a matter of privilege. In addition, it is not a breach of the standing orders or a matter of privilege if a member is not satisfied with the answer to a question. However, I remind Ministers that they should respect the right of members to ask questions both in the House and in writing and endeavour to provide adequate answers

PD 18/06/2008, pp 8751, 8760

Standing Order 131 - Request for Additional Information

SPEAKER O'DEA: As members would be aware, there is a provision in the Standing Orders under Standing Order No. 131 for members who have asked a question to seek additional information from a Minister. The granting of this additional two minutes speaking time is at my discretion and I would like to take this opportunity to advise members that in determining whether to exercise this discretion I will primarily consider three factors:

(1) whether it is in the public interest;
(2) whether the Minister's answer has been directly relevant; and
(3) the level of disorderly behaviour during the Minister's answer.

I ask that members consider these factors carefully before requesting an extension.

PD: 8 May 2019, pp 31-2

SPEAKER HANCOCK: Speaker made a considered statement clarifying that in accordance with Standing Order 131(3) a member who asked a question may, at the discretion of the Speaker, seek additional information from the Minister. The Speaker reminded members that the onus is on the member who asked the original question to make it clear they are making a request under Standing Order 131 by asking "Can the Minister provide additional information?" and that it is at the Speaker's discretion whether to allow additional information to be provided for up to 2 minutes. The Speaker also noted that any request for additional information made in accordance with Standing Order 131(3) does not constitute a supplementary question.

PD 26/05/2011, p 1188

Standing Order 131 (former SO 140) – Question Time

SPEAKER ELLIS: The main difficulty arises out of long and complex questions or questions raising matters of policy too long or involved to be answered within the limits of a reply to a question without notice. Questions of this sort should be asked only in special circumstances are to be discouraged. Often honourable members seem to overlook the fact that the true and only valid purpose of a question is to seek factual information - not opinions - or to press for action, and I appeal to Ministers to make their replies in terms as brief as possible.

PD 27/10/1970, pp 6917-8

SPEAKER MURRAY: I ask all members to take particular note of the statement I am about to make in relation to questions without notice. In recent weeks the Chair has become increasingly concerned about the form and content of questions without notice. I remind members that the provisions of Standing Order 137 apply to questions without notice in the same way as they apply to questions upon notice. There appears to be a tendency to include in questions without notice imputations of improper motives, arguments, inferences and expressions of opinion. The inclusion of all or any of those matters in a question without notice would cause the Chair to rule the question out of order. The launching of a personal attack or the imputing of improper motives in the guise of a question without notice is in breach of Standing Order 82. Such matters should be dealt with by way of substantive motion. In essence, questions without notice should be brief, singular in nature, to the point and, most important; they should not contain additional information or asides that are not necessary to make the question intelligible. The Chair proposes to enforce those guidelines.

If members are in doubt as to the admissibility of their questions, I suggest they avail themselves of the excellent advice of the Clerks at the table.

PD 02/06/1998, p 5514
VP 02/06/1998, p 66

Standing Order 131 (3) (former SO 140(3)) - Supplementary Questions

SPEAKER ROZZOLI: stated that on 8 May 1992, a member asked a question without notice commencing "In relation to the answer given to the question asked by the honourable member for Ashfield", upon which the Minister for the Environment took a point of order that the question was a supplementary question.

The Speaker observed that the original question asked, "Did the Attorney-General say publicly that he had been given incorrect advice by the Crown Solicitor on the current text of section 52 of the Independent Commission Against Corruption Act? Is that advice in writing? If so, will the Attorney make it public"?

The subsequent question asked, "Did the Minister obtain some formal, written advice from the Crown Solicitor at all and was it given prior to his writing to applicants for legal assistance? If so, will he make it public? If not, why not?

After considering the phrasing of the question, the Speaker ruled it out of order as a supplementary question. A member later that day gave notice of dissent against the ruling.

The Speaker subsequently having the opportunity to examine the points of order in their full context at some length desired to place before the House his further consideration on the matter.

The provision in the Sessional Order allows a member to ask one supplementary question. The Sessional Order is silent on whether a supplementary question must be asked immediately following the original question or at any later time within the same question time. Erskine May, (21st edition, page 296) states that a supplementary question may "refer only to the answer out of which it immediately arises, must not be read or be too long, must not refer to an earlier answer or be addressed to another Minister.

House of Commons practice indicated that a question, whether asked by the same member or another member is only a supplementary question if it immediately follows the answer from which it arises.

As sessional orders preclude supplementary questions being asked other than by the member asking the original question, the Speaker vacated the earlier ruling that the question was out of order on the grounds of it being a supplementary question.

The Speaker therefore ruled that supplementary questions only relate to a question asked by the same member at the same question time; must be asked immediately following the

original question; must arise from the answer to that question; must not be addressed to another Minister; and shall, when answered count as one of the ten questions as provided for in the current sessional order.

The Speaker examined the elements in the two questions and went on to say that Erskine May at page 292 states, "Questions are not in order which renew or repeat in substance questions already answered or refused", this rule has been confirmed in this House by Speakers Ellis, PD 1971-72 p 1413 BS and Kelly PD 1976-77-78 PP 56, 10247.

The Speaker confirmed that a question similar in nature to an earlier question may be asked; however, it should not renew or repeat in substance questions already answered or declined to be answered.

The Speaker stated that the question asked by the member was probably out of order in that it asked questions for which answers had already been given in the Attorney's reply to the first question. However, as it was now academic, he did not propose to make any ruling in that regard.

PD 08/05/1992, pp 4092-3
PD 24/06/1992, pp 4110-1
VP 24/06/1992, p 362

Standing Order 131(5) (former SO 140(5)) – Supplementary Answers

SPEAKER AQUILINA: Prior to the asking of questions without notice the Leader of The Nationals rose on a point of order in relation to a number of questions he had asked in the House and the failure of the Premier to provide information in relation to them. He noted that he had received a fax from the Premier's department after Question Time the previous day that contained information purporting to be an answer to a question he had asked in the House. The Leader of The Nationals argued that as the question had been asked in the House that the answer should also be given in the House rather than by a bureaucrat in a fax. The Leader of The Nationals also argued that the standing orders provide that a Minister may provide additional information to questions at the conclusion of Question Time and that the Premier should be directed to provide a full response to the House. The Leader of the House spoke to the point of order arguing that there is nothing in the standing orders that says a Minister must provide information to the Parliament rather than to the Member directly. The Speaker noted that he would consider the matter and rule on it after Question Time.

At the conclusion of Question Time the Speaker commented:

> I have had an opportunity to reflect on the point of order taken by the Leader of The Nationals prior to Question Time. As I have advised Members on numerous occasions, the Chair is not in a position to direct Ministers how to respond to questions without notice, as the standing orders are silent on whether answers to questions without notice have to be provided in the House. However, it is highly

desirable for answers to be given by Ministers in the House, and not privately to Members. One avenue of providing supplementary answers is under Standing Order 140(5).

In relation to this particular matter, on 18 October 2005 the Premier answered that he would obtain a report on the matter from the Minister for Health. Yesterday the Premier advised the House that this matter was responded to be the Minister for Health. The Premier has provided an answer to the questions asked by the Leader of The Nationals and it is his prerogative whether he wishes to provide a supplementary answer in accordance with Standing Order 140(5). I would, however, ask Ministers to always bear in mind, and whenever possible abide by, the convention that answers to questions without notice be provided in the House.

PD 16/11/2005, pp 19821, 19831

SPEAKER TORBAY: The Speaker gave a considered ruling in relation to a statement made by the Minister for Transport providing additional information, at the conclusion of the matter of public importance, in response to a question asked of him at question time on the previous day.

The Speaker stated that the correct procedure would have been in accordance with SO 131(5), with the additional information provided to the House at the end of question time. The Minister should have sought the leave of the House to make the statement. The Speaker also informed the House that there is no provision for the Opposition to respond to a supplementary answer, except with the leave of the House.

PD 25/02/2010, p 21003

Standing Order 132 (former SO 141) – Written Questions - late answers

SPEAKER MURRAY: It has been brought to my attention that some confusion has arisen over the requirements for the answering of questions upon notice and the operation of Standing Order 141. On Thursday, 19 September 1996, the Minister for Education and Training was asked a question upon notice by the honourable member for Ku-ring-gai, Mr. O'Doherty, which appears as question No. 801. The question was first published under the heading "19 September 1996" in the Questions and Answers paper of Tuesday, 24 September 1996, the next sitting day. Standing Order 141 provides that a question upon notice must be answered within 35 calendar days after the question is first published and if such answer is not received the Minister concerned shall be called upon to explain to the House the reason for non-compliance.

The answer to Mr. O'Doherty's question was due 35 calendar days after 19 September, that is, on Thursday, 24 October. The Minister's answer was received today, 29 October. I am informed that the non-answering by the Minister of question No. 801 by the due date arises from the fact that the summary table which appeared at the beginning of the proof question paper for 24 September showed the due date for the answer as 29 October. This error was,

however, corrected in the next Questions and Answers paper and in the corrected version of the paper of 24 September. I remind members always to double-check the due date of answers to questions upon notice from a Questions and Answers paper not showing the word "proof". It would also be wise to independently check when a question was asked and to keep a running countdown as to when the 35 calendar days will expire. In this instance I am satisfied that the non-answering by the due date of question No. 801 by the Minister for Education and Training was unintentional and, as the answer has been received today, I do not intend to call the Minister in explanation.

PD 29/10/1996, p 5421

SPEAKER MURRAY: Pursuant to Standing Order 141 I have to inform the House that answers to the following questions on notice were received after the time prescribed by the standing orders: No. 1, standing in the name of the Premier, due 27 June; No. 13, standing in the name of the Minister for Public Works and Services, due 6 July; No. 30, standing in the name of the Deputy Premier, due 6 July; No. 31, standing in the name of the Premier, due 6 July; No. 49, standing in the name of the Minister for Consumer Affairs, due 11 July; No. 50, standing in the name of the Deputy Premier, due 11 July; No. 54, standing in the name of the Minister for Agriculture, due 11 July; No. 59, standing in the name of the Minister for Education and Training, due 12 July; No. 60, standing in the name of the Minister for Education and Training, due 12 July; No. 68, standing in the name of the Minister for Public Works and Services, due 12 July; No. 72, standing in the name of the Minister for Consumer Affairs, due 12 July; No. 73, standing in the name of the Minister for Consumer Affairs, due 12 July; No. 74, standing in the name of the Minister for Consumer Affairs, due 12 July; No. 77, standing in the name of the Minister for the Environment, due 13 July; No. 79, standing in the name of the Minister for Consumer Affairs, due 13 July; No. 82, standing in the name of the Minister for Consumer Affairs, due 13 July; No. 85, standing in the name of the Minister for Consumer Affairs, due 13 July; No. 86, standing in the name of the Minister for Consumer Affairs, due 13 July; and No. 92, standing in the name of the Minister for Consumer Affairs, due 13 July.

Whilst highlighting these late answers, I will not be calling Ministers to explain the reasons for the late answers as all the answers have now been lodged. This is in accord with the practice developed in the previous Parliament, when Ministers who were called to explain late answers invariably advised the House that the answers had already been lodged. Such a statement has always been accepted as an explanation by the House. Thus, at this early stage of the Fifty-first Parliament, I am inclined to give the benefit of the doubt to new Ministers and their ministerial staff in terms of their familiarisation with the question paper and its format and their responsibilities to the House pursuant to Standing Order 141. In future Ministers will be called to give reasons for lodging late answers.

PD 19/09/1995, p 1061
VP 19/09/1995, p 203

Standing Order 133 - Notices of Motions

SPEAKER HANCOCK: regarding the giving of notices of motion:

"Many of the motions of which members gave notice today were excessively long. Such motions use up to 10 minutes available to members who wish to give notice of a motion they will move. I realise that the motions are important to both the members and their electorates. However, members should ensure that their motions are not lengthy out of respect for other members who may wish to give notice of a motion".

PD 21/08/2012, p 14063

Standing Order 137 (former SO 146) - Notices of Motions - form and content of

SPEAKER O'DEA: … Notice of a motion containing argument, unbecoming expressions or otherwise not conforming with the practice of the House may be amended or ordered by the Speaker to be not printed. Members should note that they are giving notices of motions. This is not an opportunity to present argument or expressive statements, but purely to give notices of motions. Consistent with that, they should be delivered in a relatively dispassionate form, rather than as a statement or a semi-speech.

PD 22/8/19, p 1

SPEAKER MURRAY: Before calling for notices of motions, I remind Members of the purpose and function of this parliamentary procedure. When members give notices of motions, they are informing the House that they intend to propose that the House do something or order something to be done, or they are expressing an opinion in regard to some matter. A motion must, therefore, be phrased in such a way that, if agreed to, it will purport to express the judgment or will of the House. A notice of motion should be termed so as to give a precise proposition for determination by the House. Recently notices have become inordinately and unnecessarily long. The Chair emphasises that the giving of a notice of motion is not intended as an opportunity to make a long argument or convey the substance of a proposition. Nor, as Erskine May points out at page 336 of the twenty-second edition of *Parliamentary Practice*, should notices of motions be "tendered in a spirit of mockery or designed merely to give annoyance."

The House will be aware that I have advised the Clerks to scrutinise all notices to ensure that the form and content of any motion that is to come before the House is in order and does not offend any standing order of the House. Under my authority the Clerks will eliminate unnecessary statements or arguments from notices prior to their publication in the business paper. I also remind members that a clearly legible, signed notice of any motion must be handed up in writing to the Clerk at the table at the time that it is given. I have said this before when insisting on a typed notice. However, if the notice is legible I will accept it

because I acknowledge that there are occasions on which members wish to expedite motions.

PD 27/02/2002, pp 59-60

SPEAKER MURRAY: Yesterday I indicated to the House that I would give a considered ruling today on the general trend for notices of motions and notices of motions for urgent consideration to contain argumentative and emotive terms, unnecessary statements of fact, points for debate and verbosity. By way of background, Standing Order 146 empowers the Speaker to amend notices or to order certain notices not to be printed on the business paper. There are ample precedents over the years in the way various speakers have used their power under Standing Order 146. However, an examination of the current business paper reveals many examples of general business general notices of motions taking up to half a page containing argument not necessary for a parliamentary motion. My feelings and the interpretation of Standing Order 146 are best encapsulated in a statement given by Speaker Snedden to the House of Representatives of Australia on 4 May, 1977 as follows:

> On 30 March . . . I drew the attention of the House to the need to have the recitals of notices examined in order to ensure they were necessary to make the motion meaningful and that they did not amount to a speech or argument in support of the motion. Since that time I have noticed that honourable members are continuing to give notices which are inordinately and unnecessarily long. Honourable members are tending to use this form of the House to narrate a long argument - in effect, a speech anticipating a debate - when they should be putting a concise proposition for determination by the House. I have a discretionary power under the Standing Orders and practices of the House to direct that a notice be not received in an inappropriate form or that its terms be corrected before it is placed on the notice paper. If honourable members continue to misuse that form of the House, I shall have to intervene to have the honourable member concerned reform his notice or alternatively to have the Clerks eliminate the argument and unnecessary statements of fact.

That ruling is contained in *House of Representatives Practice*, third edition, page 304. I therefore wish to inform the House that from today the Chair will rule out of order notices that do not put a concise proposition upon which the House may vote. I remind honourable members that they should avail themselves of the advice of the Clerk in drafting motions. Further, I intend to place this matter before the Standing Orders and Procedure Committee to consider at its next meeting.

VP 15/05/1997, p 892
PD 15/05/1997, p 8729

SPEAKER TORBAY: A trend has developed for members to give notices of motions that are lengthy, contain argument, unbecoming expressions, and which at times are given in the spirit of mockery. I remind members that such notices are out of order.

In accordance with standing order 137 the Clerks are able to amend such notice under my authority to ensure they conform to the standing orders. However, if members persist in

giving notices that are out of order I will rule them to be out of order and not published in the Business Paper.

I remind members that a notice of motion should be a self-contained proposal and be drafted in such a way that the House is able to express a decision when the motion is moved.

Members should avail themselves of the advice of the Clerks if they are unsure whether a notice is in an acceptable form prior to giving it.

PD 23/09/2009, p 18003

Standing Order 137 (former SO 146) - Notice of Motion Ruled Out of Order

SPEAKER ROZZOLI: informed the House of the reasons for ruling out of order the notice of motion given by the honourable member for Newcastle on the 31 March 1993.

The notice of motion was as follows:

> "That this House notes the failure of the Minister for Natural Resources to correctly and fully answer Question No. 528 (paper No. 5 of 4 March 1993) standing in the name of the member for Newcastle and calls upon the minister to fully answer all aspects of the question asked by the due date of lodgment 18 May 1993."

The Speaker having stated Standing Order No. 78: "An answer shall be relevant to the question and in answering any such question a member shall not debate the matter to which the same refers" ruled that the Chair could direct only to the relevance of an answer. This ruling was supported by rulings of Speaker Kelly that Ministers may give information that has been sought, and may answer as they see fit. (see PD 6/12/78, 1413; PD 16/8/78 , 188).

All answers given would be open to subjective assessment as to whether they were right, wrong, complete or an abbreviated answer, and as a consequence, every member could complain about many aspects of answers they receive.

The Speaker stated that the device of placing a notice, such as the type of the Honourable Member for Newcastle, could be used by every Member dissatisfied with an answer, be open to abuse and could go on ad infinitum and further that such notices contained argument. The Speaker thus ruled out of order the member's notice of motion.

The Speaker also noted that there were numerous alternative procedures by which honourable members could express their dissatisfaction with Ministers replies in conformity with the Standing Orders and Rules of this House and as such the rights of honourable members were in no way impaired by the ruling.

VP 01/04/1993, p 135

Standing Order 180 – Divisions – procedure for

SPEAKER HANCOCK: I now have a general message for all members, especially for newer members who may not be aware. There are certain rules and customs we must all observe if the dignity of the House is to be upheld. I remind members of two of those rules and customs in relation to divisions. Firstly, once a division has been called for, the bells will be rung for four minutes. After that time has expired, the Chair will call for the doors to be locked. It is grossly disorderly for any member to then enter the Chamber after the bar of the House has fallen or to raise the bar themselves to enter. Secondly, it is also grossly disorderly for members to move about the Chamber once the doors have been locked. Members should take their seats as quickly and as quietly as possible so that the tellers can then do their jobs of recording the decision of the House. If members have any questions about the proper etiquette in the Chamber I ask them to seek the advice of the Clerks.

VP 21/9/2017, p 1406
PD 21/9/2017, p 29

Standing Order 218 (former SO 235) – Bills – Motion 'That this bill be now passed'

SPEAKER ELLIS: Statements for the guidance of Speakers on what is permissible on third readings do not seem to be very plentiful. The most relevant is a statement made by Mr Speaker Clyne on 5th May, 1943, and recorded in volume 170 of Hansard at page 2912. He said:

"Parliamentary usage provides that, on the motion that a bill be read a third time, speeches shall be confined to the contents of the measure. Consequently, the debate is not so wide in scope as is permitted on the motion for the second reading of a bill. I shall permit the hon. member reasonable latitude in his remarks, but he must address himself to the contents of the bill as now before the House."

Rulings by Speakers in the House of Commons appear to indicate that on the motion for the third reading of a bill it is not in order to revive discussion of clauses that were dealt with in the earlier readings of the bill. The statement in May is that honourable members must confine themselves to the principles of the bill. It appears to be clear that the debate must be very restricted, and I do not think that in any circumstances I can allow honourable members to start canvassing statements that appeared in a newspaper about what took place in the House last night. I must confine the debate strictly to the contents of the bill and, as Mr Speaker Clyne observed, "no comparisons or deviations are allowed". I am not quite clear on what he meant by that, but certainly the observation is directed to indicating that debate on the third reading must be restricted. I will allow the honourable member for Lake Macquarie reasonable latitude, but I cannot allow the debate to range at any great lengths.

PD 13/09/1967, p 113

Standing Order 243 – Financial Procedures

SPEAKER O'DEA: (During the consideration in detail stage of the Ageing and Disability Commissioner Bill, the Member for Orange proposed an amendment requiring the Government to provide $20 million annually to non-government advocacy organisations.)

I note that the proposed amendment that has been put forward raises a number of important constitutional provisions in relation to the ability of private members to bring forward amendments that propose financial measures. I do acknowledge that the amendment involves public interest matters. However, I note that on previous occasions where similar provisions have been proposed in legislation they were private member's bills that had lapsed and did not proceed. Consequently I do not consider that this House has previously agreed to such provisions within proposed or actual legislation. In those circumstances, particularly noting the relevant provisions of section 46 of the Constitution Act and Standing Order 243, I rule that the amendment is not in order.

PD 29/05/2019, p 68

Standing Order 249 - Removal of Members

SPEAKER HANCOCK: Speaker made a considered statement clarifying that when a member is removed in accordance with Standing Order 249, that member is excluded from the parliamentary precincts until the adjournment of the House. The Speaker noted that it was established practice that the member excluded has 30 minutes to leave the parliamentary precincts.

PD 26/05/2011, p 1188

Standing Order 250 (former SO 289) - Disorder - Member named

SPEAKER MURRAY: Honourable members will recall that Mr Kinross, the member for Gordon, was suspended from the services of the House on 22 May 1996. Points of order were taken prior to the member's suspension regarding my powers to compel the return of the member to the Chamber. When indicating on that occasion that Mr Kinross should return to the Chamber it was not my intention to convey that force should be used to ensure his return and I understand that force was not used. Since *Willis and Christie v Perry* it has not been the practice of this Chamber to forcibly compel the return of a member to the Chamber in such circumstances.

PD 22/05/1996, p 1371
PD 27/06/1996, p 3821
VP 27/06/1996, p 356

Standing Order 260 (former SO 301) – Visitors – Removal of

SPEAKER ROZZOLI: I direct the official cameraman to stop filming the proceedings of the House until further notice. It is always with the deepest of regret that the Chair orders that the public galleries be cleared, because in our democratic society members of the public should have the opportunity to observe the proceedings of the Parliament. However, the Parliament assembles to deliberate on matters concerning the State, and members of the public are permitted to observe those proceedings as a matter of privilege. If the presence of members of the public interferes with the capacity of the Parliament to deal with its business, two elements are thrown into conflict, and the needs of the Parliament must prevail.

The incidents in the public gallery on two consecutive days raise considerable concerns with regard to the safety of members, which is a primary concern of the Chair. Although neither incident caused actual bodily harm to any person, the possibility arises - having regard to the publicity that has been and will no doubt be given to the incidents - that people with little emotional control will contemplate more drastic action. I shall therefore conduct an immediate investigation to ascertain what measures can be adopted to increase security. In the short term, however, there is little that can be done.

Each person in the public gallery at any one time is, theoretically, present as the guest of a Member of Parliament. All members, therefore, are responsible for the conduct of those whom they invite to sit in the gallery. Members should advise those whom they invite to observe the proceedings of the House that if they wish to remain in the gallery, they should maintain decorum at all times. If there is any disruption from the galleries on any day between now and the end of the sitting, I will clear both galleries immediately, as I have done today. The capacity of Parliament to continue to deal with its business and the security of its members are paramount considerations.

I trust that members will cooperate fully to bring to the notice of those whom they introduce to the galleries the necessity to be well behaved and remain silent at all times. The last thing that the Chair or any member of this House wants is to prevent any member of the public from visiting Parliament House and observing its proceedings. The galleries will be reopened at a later hour of the day when I deem it appropriate. Question time will continue, and the official cameraman may continue to film the proceedings.

PD 30/11/1994, p 6006

Standing Order 261 (former SO 302) – Visitors – Conduct within the Building

SPEAKER ELLIS: I am of the firm opinion that there is no place in this Parliament, or in the precincts of this Parliament, for those who are not prepared to behave in a conventional and commonly accepted manner.

It is, therefore, in my opinion, my duty as Speaker to take whatever procedures lie within my power to prevent, or, at any rate, to make it very difficult for any persons not prepared so to behave themselves, to enter the precincts of the Parliament. Once, however, such persons are, by one means or another, able to gain entry, the member admitting them must accept a large measure of responsibility for their conduct, and also for ensuring that when their business with him is completed; his visitors leave the premises immediately and in an orderly fashion.

[Former] Standing Order 61 [now 302] provides that no Member shall bring a stranger – that is, a visitor – into any part of the building appropriated to the Members of the House, except to such rooms as may be set apart for strangers. Because of lack of accommodation there are only three strangers rooms set aside for interviewing visitors. Members are personally responsible for visitors whom they admit for interview and failure to ensure that his visitor vacates the premises in an orderly manner, could place a member in danger of being adjudged by the House itself – not by me – guilty of an offence against the authority of the House – as indicated in May's *Parliamentary Practice*, 18th edition, at page 65 – in the sense that he was an accessory to the presence of a stranger in a place not set apart for strangers, in contravention of Standing Order 61. Any such Member could, of course, be in contempt of Parliament, and should the House so decide, he could be liable to some form of punishment by the House itself.

In future when a demonstration occurs outside the House, the gates will be closed to visitors; visitors will be admitted only upon request of a Member; because the accommodation set aside for strangers is limited to three rooms, only six visitors will be admitted at any one time; two visitors to any one Member at one time – that is two visitors to each of three Members. As already indicated, a Member admitting visitors will be responsible for the orderly behaviour of the visitors and their orderly departure from the premises. If it becomes necessary, action will be taken under the Summary Offences Act to deal with disorderly persons in the premises. In my view, however, this is a last resort, to be taken only when all other efforts to ensure normal and proper functioning of Parliament have become inadequate.

It is regretted that it might sometimes be necessary to enforce the restrictions to which I have adverted. I earnestly seek the co-operation of all Members to ensure that all citizens having good reason to call upon Members may do so without hindrance. Until the House otherwise resolves or directs me, the foregoing procedure will be applied in appropriate cases.

PD 22/08/1972, p 116

SPEAKER ELLIS: The observations I made the day before yesterday and the procedure I then laid down are intended to apply particularly on occasions when a demonstration is imminent or is taking place outside the House. Of course, enforcement action will always depend upon the facts and circumstances of each particular demonstration.

Subject always to any contrary instruction from the House, I intend to apply the procedures with a degree of flexibility appropriate to the particular circumstances to be handled, so as

always to cause a minimum interference with legitimate access to the House by members of the public and free communication by members of the public with honourable members, consistent always with the need to protect honorable members and to protect the Parliamentary institution from disruptive practices.

PD 24/08/1972, pp 285-6

Standing Order 266 (former SO 307) - Papers and Documents - tabling of document quoted during debate

SPEAKER MURRAY: I refer to a point of order taken by the Deputy Leader of the Opposition today in which he quoted from a ruling that I had supposedly made on 28 October 1998 in reference to the tabling of a document that was quoted in debate. I have looked at the Hansard record of that exchange in 1998. I advise honourable members that my remarks on that occasion have not been interpreted correctly. I did not order the tabling of the document at that time. Rather, Hansard notes that a member had asked the Minister to table the document, which the Minister did on his own initiative.

PD 28/10/1998, p 9201
PD 15/11/2001, pp 18730, 18746
VP 15/11/2001, p 1634

Standing Order 271 – Incorporation of material in Hansard

SPEAKER TORBAY: During discussion on a matter of public importance on 14 November 2007 the member for Tamworth sought leave of the Chair to incorporate a document from the Victorian Government Solicitor's Office into the *Hansard* record. The document had already been laid upon the table for the information of members by the member for Port Macquarie earlier in the discussion. The Acting-Speaker, Mr Wayne Merton, in denying leave for the incorporation of the document, said that he would raise with me the matter of the incorporation of a legal opinion in *Hansard*.

A number of factors need to be considered in relation to whether a document should be incorporated in *Hansard* or whether it is sufficient for it to be laid on the table for the information of members. These factors include the costs to the Parliament of having the material incorporated and whether the material is already publicly available. Members are reminded that leave is not readily granted by the Chair for documents to be incorporated in *Hansard*. The reasoning behind this principle is that in most cases it is sufficient for members to quote from documents, after identifying them, thereby making their contents part of the parliamentary record. The type of material that may be considered for incorporation is usually limited to material that cannot readily be explained such as sketches or graphs.

The document in question was a discussion paper on the WorkChoices decision in the High Court which is publicly available on the Victorian Government Solicitor's Office website.

While this paper is not a legal opinion and it would be unusual for legal opinions, particularly Crown opinions, which are generally confidential, to be incorporated in *Hansard* legal opinions can, however, be laid on the table for the information of members. Accordingly, I agree that the request to incorporate the document in *Hansard* should have been denied.

PD 06/12/2007, p 5279

Standing Order 328 (former SO 368) - Council request for Assembly attendance - Estimates Committees

SPEAKER MURRAY: I wish to make a brief statement on the conduct of the Legislative Council General Purpose Standing Committee hearings on the estimates of The Legislature. As members no doubt are aware, there has been some discussion in the public arena revolving around my decision as Speaker, both last year and this year, not to attend the hearings on The Legislature. There are many important duties attached to the office of Speaker. The Speaker has duties which revolve around proceedings in the House, duties in the management of the Parliament and duties which are connected with the official representation of the Parliament. Another duty, which I consider to be of the utmost importance, is my statutory duty, referred to in section 31 of the Constitution Act, to be the independent and impartial representative of the members of the Legislative Assembly. Part of that duty is to uphold the status of this House as the pre-eminent Chamber in our two-House system.

The Legislative Assembly is the House from which the Government is formed, the House to which the Executive Government is obliged to go for its appropriations and the House to which the Treasurer comes to make the Budget Speech. With this in mind, I consider it my duty to take a stand against the other place over what I believe is a gross discourtesy towards the Assembly and its members. Members would be aware that there has been some dispute between the Houses as to whether the estimates committees, which were originally conceived by this House, should be joint committees comprising members of both Houses. This disagreement has been the subject of messages between the Houses, which is right and proper and in accordance with the standing orders of both Houses.

However, the Legislative Council, by abandoning this dialogue through messages and other means, and by giving a general purpose standing committee a reference on the Budget Estimates, has failed the people of New South Wales by not recognising the position of the Legislative Assembly as the pre-eminent House in respect of appropriation bills, as confirmed by the Constitution Act, and has thus significantly disadvantaged members of this House. Because of its action in referring the Budget Estimates to a Council-only committee, members of this House, particularly shadow ministers, have been denied their proper right to participate in a joint estimates process. I believe that this is a grave slight on this House. Indeed, my predecessor attended such committees when they were joint committees, as I would.

As your Speaker I felt that I should protest against the Council's unilateral action, as joint head of the parliamentary administration, by not attending the hearings on The Legislature's

estimates. There are two additional reasons that I decided not to attend the hearings of the General Purpose Standing Committee. Firstly, the independence of the two Houses of Parliament is a well-established principle under which, to quote May's *Parliamentary Practice*, twenty-first edition, "neither House can claim, much less exercise, any authority over a Member or officer of the other". It is in accordance with that ancient principle and following our standing orders 367 and 368 that the message from the Council should have been sent. There are similar standing orders of the Legislative Council providing for such attendance.

Secondly, the references given to the Legislative Council's General Purpose Standing Committee of 19 May 1997 make no provision, either directly or by implication, for the summoning or asking of questions of the Presiding Officers or officers of this Parliament. Paragraph 5 of the terms of reference allows the questioning of only "Ministers, or officers of any department of Government, Statutory body or Corporation". Similarly, the resolution establishing the committees on 7 May 1997 confers only a general power to investigate "any department of government, statutory body or corporation". The committees therefore had no authority to ask questions of a Presiding Officer or any other officer of this Parliament. In summary, the actions I took were in the name and on behalf of the House in an attempt to assert its undoubted rights and its privileges.

VP 17/06/1997, pp 991-2
PD 17/06/1997, p 10373

Admissibility of questions on matters before the Independent Commission Against Corruption

SPEAKER AQUILINA: On 1 March the honourable member for Epping asked a question of the Minister for Juvenile Justice, Minister for Western Sydney, and Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) touching on evidence given at the Independent Commission Against Corruption. Although I allowed the Minister to answer the question, at that time, I said I would provide a detailed ruling at a later stage. The rule that motions, debates and questions should not make reference to matters awaiting or under adjudication is intended to ensure that there is fairness, that there is no prejudice, and that Parliament does not prejudge findings or influence a jury or witnesses. The Independent Commission Against Corruption is not a court of law, and questions have been asked and answered in this House in relation to then current ICAC investigations.

However, if the Chair perceives that questions, debates or motions give rise to a real and substantial danger of prejudice to proceedings, those questions, debates or motions should not be allowed. In some instances the greater public interest may lie in restricting debate or questions if they clearly canvass evidence, prejudge proceedings or seek to influence the finding of the commission. Members enjoy freedom of speech in this House. That parliamentary privilege is expressly recognized in section 122 of the Independent Commission Against Corruption Act. However, members need to be aware that this privilege should be exercised with care so that, in the interests of justice, a witness does not feel inhibited or that his or her legal rights have been denied.

PD 22/03/2005, p 14704
VP 22/03/2005, pp 1292-1293

Application of sub judice rule

SPEAKER HANCOCK: I gave a statement in relation to this matter earlier. I have just received advice from the Clerk as to whether my cautions were correct. I feel that I have been vindicated. There is a person who has been arrested and is in custody. I do not know whether he has been charged, but the sub judice convention observed by the House is stricter in relation to criminal matters that have proceeded to a charge. Once again I caution members to consider any comments that they are contemplating which may have the potential to impact on matters that later come before the courts. Members may wish to play politics but I am giving a caution, from the chair, not to proceed.

PD 21/11/2018 p 43

SPEAKER ELLIS: Honourable members will recall that the *sub judice* rule has been the subject of a number of announcements from the Chair since I became Speaker. There is an interesting observation contained in a recent report of a select committee of the House of Commons which was sitting while I was there recently: I believe it to be very helpful. It says that when a question arises as to whether the Speaker should resist discussion because of considerations of the *sub judice* rule, certain essential principles should guide him. The first is "that it is the fundamental responsibility of Parliament to be the supreme inquest of the nation with the overall responsibility to discuss anything it likes." That is the first consideration to which the Speaker should direct his attention. The second consideration is whether "a danger exists that the conduct of a case might be prejudiced by parliamentary inquisition or debate." Nothing has been indicated to me - at this stage at any rate - to suggest that any court will be embarrassed or any person will be prejudiced in any proceedings in which he is involved either civilly or criminally by the matter under discussion and relevant to this motion. I ask the honourable member not to raise any matter if he is aware of the fact that the matter he wishes to canvass is or may be directly involved in certain court proceedings. Beyond that, I do not feel that I can restrict the debate in any way at all.

PD 07/11/1972, p 2286

SPEAKER ELLIS: Doubtless all honourable members will readily agree that it would be highly improper to permit a discussion to take place in this House upon a matter which is the same, or substantially the same, as the issue or question currently before a court for decision by it, or which itself is a matter upon which the court will need to adjudicate as part of the process of deciding the main issue before it. To allow such discussion would be likely to or might possibly prejudice the issue before the court, or in some way influence or embarrass the court in coming to a decision.

These principles are well established and soundly based in the interests of justice, uninfluenced by political and other extra-judicial considerations. But in my view it should not necessarily follow that because a matter is before a court, every aspect of it must be *sub judice* and beyond the limits of permissible debate in Parliament. It has always troubled me to hear all aspects of a case before the court ruled out of order in Parliament whilst at the same time the press, without in any way offending the court or embarrassing it or, in my view, transgressing any rule of law or propriety, are able to deal with some aspects of the same matter. A ruling such as this means that either debate in Parliament is being unduly restricted or the press are transgressing - and I do not consider this to be the case - the *sub judice* rule, and that by the tacit consent of the court as ordinarily no objection is raised by it.

The great difficulty, in my view, is to determine what is the real matter before the court. Because of this difficulty some of my predecessors appear to have been constrained to apply the *sub judice* rule strictly and to have ruled accordingly, that since neither the Chair nor any honourable member is in a position to know exactly what is the issue before the court, or what matters are material and relevant to that issue, neither the matter nor any aspect of it may be referred to in debate.

This is perhaps a safe way, and certainly it is least likely to prejudice the interests of the parties involved before the court. In my view, however, this approach to the *sub judice* problem is too restrictive of debate and the Chair ought to endeavour to apply a more flexible ruling so as to allow maximum debate, stopping only at the point where there appears to be a real possibility of prejudicing the interests of the parties involved before the court or in any way embarrassing or influencing the court itself.

Accordingly, whilst I will not allow any debate on a specific matter clearly involving the matter before the court, I propose to allow debate in a general way and on broad issues of policy up to the point when it becomes clear to the Chair, either upon its own information or upon submission upon a point of order taken by an honourable member, that another honourable member is seeking to discuss the specific matter before the court or an aspect of it which the court must necessarily examine in coming to a decision on the issue before it.

I am supported in this view by a ruling given by a former Speaker of this House, Sir Daniel Levy, on 7th September 1932, and recorded at length in the *Votes and Proceedings* at page 12, from which I quote:

In an ordinary case before one of our law courts, if it were proposed by one of the parties to the proceedings to open up a line of evidence which the judge considered irrelevant, would that occurrence entitle an honourable member of this House to pursue the matter by discussion on the floor of this House, while the case was still pending on the assumption that the matter to be discussed was not *sub judice*? If the proposed subject of discussion were substantially associated with the proceedings before the court, then it would not be for the Speaker to microscopically sift the relevant from the irrelevant evidence, but to liberally apply the sub judice rule in such a way as to prevent the mischief which that rule was intended to obviate.

This ruling is also supported by one made by Speaker Lamb on 6th July 1949, and recorded in the Votes and Proceedings at page 214, when he ruled that the Hon. Vernon Treatt, then Leader of the Opposition, could proceed with a most comprehensive motion relating to strikes notwithstanding that there was right at that point of time a prosecution pending in court in respect of a particular strike. Mr Speaker Lamb indicated that he was not in a position to say that Mr Treatt's motion related specifically to the identical matter then before the court.

Honourable members will appreciate that it will be necessary for the Chair carefully to observe the debate and at once to restrain any discussion which appears to be proceedings to the point where it is violating this rule, and if honourable members display a tendency to take unwarranted liberty with this liberal interpretation of the *sub judice* rule it may be necessary for the Chair either to review this ruling or to revert to the strict application of the *sub judice* rule.

PD 25/08/1965, pp 75-6

Application of sub judice rule – When rule might yield

SPEAKER ELLIS: The Speaker drew attention to the ludicrous situation which a highly technical application of the *sub judice* rule creates when "issues pending before a court are freely discussed in the press and other mass media" while "members of Parliament are restrained from commenting in Parliament on the same matters". Conceding that the rule, well established in our system, was to ensure that "no conduct should be permitted which is likely to prevent a litigant in a court of justice from having his case tried free from all manner of prejudice" the Speaker said the rule was, however, subject to certain qualifications, themselves based upon freedom of speech in a Democratic Society.

He went on to quote an observation of Sir Frederick Jordan, when Chief Justice, in the case of *ex parte Bread Manufacturers Limited re Truth & Sportsman Limited* (1937 S.R. p 242):

> The administration of justice, important though it undoubtedly is, is not the only matter in which the public is vitally interested…The case may be one in which as between competing matters of public interest the possibility of prejudice to a litigant may be required to yield to other superior considerations. The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciation may, as an incidental but not intended by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant.

The Speaker expressed the opinion that "the ventilation in Parliament of matters of great public concern may well, in proper cases, involve superior considerations to which the possibility of prejudice – if it does exist, which I sometimes doubt – must be required to yield in terms of the principles enunciated by Sir Frederick Jordan".

In future (continued the Speaker) he would examine each case on its own merits, and although it would sometimes be extremely difficult to decide whether or not the rule should be relaxed, he considered this course to be the one to be followed.

PD 05/11/1969, pp 7404-5

Application of sub judice rule – as to Royal Commissions' Inquiries

SPEAKER ELLIS: I have always held that the rule does apply to such proceedings in the same manner as it applies to all proceedings in a court of law. In coming to this conclusion I have been persuaded by a number of considerations to which I propose to make only brief reference. First, as far back as 7 September, 1932, Mr Speaker Levy stated:

No reference or allusion must be made in debate in this House to any matters pending before Courts of law or by analogy before a Royal Commission.

Mr Speaker Levy said that this rule was well established. It was, he said, "A very salutory rule that had been strictly observed in the House of Commons as well as in this House". Second, on 23 July, 1963, the House of Commons ordered that the application of the sub judice rule be referred to its Select Committee on Procedure for consideration and report. Following upon the Committee's report and recommendations, the House of Commons resolved:

Subject always to the discretion of the Chair and to the right of the House to legislate on any matter, the sub judice rule should apply not only to cases in criminal courts, civil courts and courts martial –

I emphasise these words –

but also to any judicial body to which the House has expressly referred a specific matter for consideration and report.

Third, in 1972, further difficulties arose – the Leader of the Opposition may recall this because he and I were both in England at this time – and again the House of Commons referred the rule to its Select Committee on procedure. This select committee under the heading "Guidelines for the Exercise of Mr Speaker's Discretion" recommended that the resolution of the House of 23 July, 1963, to which I have already referred, relating to matters sub judice, should continue to apply, subject always to the discretion of the Chair and the right of the House to legislate to matters before criminal courts, courts martial and judicial bodies such as Tribunals of Inquiry under the Tribunals of Inquiry (Evidence) Act 1921.

It is pertinent to indicate to the House that inquiries under the Tribunals of Inquiry (Evidence) Act, 1921, are, for all practical purposes, substantially equivalent to our Royal commissions under the Royal Commissions Act of 1923. In other words, the select committee of the House of Commons, as recently as May of last year, re-affirmed its resolution of 1963 that the sub judice rule applies to Royal Commissions. It is perhaps

pertinent to mention to the House also that, still under the heading, "Guidelines for Mr Speaker's Discretion", this 1972 report of the House of Commons select committee recommended to the House that:

Matters awaiting or under adjudication in all civil courts, except defamation proceedings, may be referred to in questions, motions or debate unless it appears to the Chair that there is a real and substantial danger of prejudice to the proceedings.

Honourable members will recall that in a considered ruling of mine as far back as 1965, in which I greatly relaxed the application of the sub judice rule in this Parliament, the House of Commons has now relaxed it in almost precisely the same way. The Leader of the Opposition made some reference to the practice of the Victorian Parliament. I have made some inquiries – such as I have been able to in the limited time available – in this connection and am informed that Speakers in that Parliament appear usually to have avoided a positive ruling on the point as to whether or not the sub judice rule should be applied to Royal commissions. However, upon one occasion the Speaker of that Parliament ruled definitely that the sub judice rule does not apply to proceedings before judicial or quasi-judicial inquiry.

If I understood the honourable member for Auburn correctly, one matter that concerned him yesterday was that an honourable member's name might in some way become involved, or statements made by him in the House might be referred to in the proceedings before the Royal commission. I gather he fears that, because of the application of the sub judice rule to the proceedings before the commission, the honourable member involved would be precluded from defending himself in this Chamber. The clear answer to this fear is that the Crown has set up a Royal commission to investigate certain matters, and one of the reasons for the application of the sub judice rule to the proceedings of the commission is to avoid the House now setting itself up as an alternative forum to that to which the matter has been delegated. It is perhaps appropriate to observe in this connection that on 21 August last, the House – and the Opposition did not oppose this procedure beyond adding a rider to it – expressly by resolution, waived certain of its privileges to enable any honourable member to appear before the commission and make submissions or give evidence before it.

In my opinion all honourable members may safely assume that the calm, judicial atmosphere of a Royal commission, presided over by an illustrious judge of undoubted integrity, will be found to be much more conducive to a fair and just hearing and decision than is likely to be given in the emotionally and politically charged atmosphere of this party-politically dominated Chamber. The Royal commission and not Parliament is now the forum to deal with the matter and, accordingly, matters impinging or likely to impinge upon the terms of reference to the Royal commission may not also be debated in this House until after the commission concludes its report to the Governor. These observations are intended to clarify the position and not to vary any previous rulings I have given upon the subject.

PD 13/09/1973, pp 858-9

Parliament - Problems concerning Members' Services to be raised with Presiding Officers

SPEAKER MURRAY: During Private Member's Statements, Member raised the issue of Parliament House security and staffing. Later, the Speaker stated that, by a long-established convention, matters pertaining to the administration of Parliament and the provision of members' services are brought to the attention of the Presiding Officers. Unfortunately on this occasion the Leader of the National Party broke that established and longstanding convention whereby, if any member has a problem with services provided, the member would seek to discuss the issue privately with the Presiding Officers in the hope of solving the matter or of receiving accurate information.

On this occasion the Leader of the National Party made no effort to discuss his concerns with the Presiding Officers and, more importantly, his information was inaccurate. However, all members can be assured that I, as the Presiding Officer for this Chamber, have their utmost interests
at heart.

PD 17/04/1996, pp 135, 147
VP 17/04/1996, p 34

Members – Conduct of

SPEAKER O'DEA: (The Speaker made the following rule on whether it was disorderly for a member to encourage interjections)

… I am of the view that it is generally disorderly for any member who has the call to encourage other members to interject. While members can ask rhetorical questions within an address, it is generally out of order to continually ask a series of questions that attempt to solicit or encourage answers by way of interjections.

…

While I would accept that there is a distinction between the member who uses their call to actively seek interjections and the member whose speaking time is interrupted against their will, all interjections are technically disorderly and so to solicit them is also technically disorderly. Indeed, as Standing Order 52 states:

When a Member is speaking other Members shall not converse or make any noise or disturbance.

So technically most of you are out of order every day. It is evident that soliciting interjections is not new and a search of Hansard provides examples of it being used as a tactic by both sides over the years. In 1990, for example, Speaker Rozzoli ruled that the Leader of the Opposition, Mr Carr, should not challenge the Government benches to answer

his questions when they had no right to respond. In 2010 Speaker Torbay upheld a point of order that Premier Keneally should not lead other members to interject. More recently in 2012 Speaker Hancock requested that the then Minister for Planning not incite Opposition members and in 2014 asked the then Minister for Family and Community Services to refrain from canvassing answers from other members as this encouraged disorderly conduct.

Members will see from these examples that my general view is consistent with those held by my predecessors in the chair. However, I am sure that none of you wants me to become too pedantic or heavy-handed in applying the standing orders. I do not wish to unduly dampen the creative freedom that Ministers demonstrate in answering questions with an engaging and interesting style. I do not always pull up interjections, depending on their nature, extent and context. Likewise I will not pull up relatively innocuous examples of soliciting interjections, especially where no objection is made and there is no extreme behaviour that disrupts the House. The House can function well with a limited level of interjection but let us all try to be sensible and respectful. While behaviour that solicits repeated and loud communal interjections might reasonably be objected to, it might also sometimes be seen as part of the rigour and theatre of question time. As your Speaker I will always endeavour to uphold order in this place but I make one final important observation: This House works best when it effectively self-regulates.

PD 31/7/19, pp 32-3

SPEAKER MURRAY: Members would be aware of the concern I expressed during question time yesterday regarding the behaviour of members from both sides of the Chamber. I acknowledge the volatility of certain matters which at times come before this House, however it must be apparent to all members that unruly behaviour in the Chamber does little to enhance their public image. My purpose in making this statement today is to warn all members that I will be paying particularly close attention to seek out those who wilfully disregard the wishes of the Chair, in particular with regard to members raising spurious points of order, moving around the Chamber and conversing loudly with colleagues.

I emphasise that all members have the responsibility to uphold the rules of the House and conduct themselves in an orderly and courteous manner. I believe that the events of yesterday are best put behind us, but I warn all members that a repeat of such behaviour will result in the removal of offending members from the Chamber. I will not tolerate the use by members of un-parliamentary language or members engaging in un-parliamentary conduct. Members of the community gathered in the public gallery as well as members of Parliament have a right to hear the words spoken in this Chamber. They certainly expect decorum from their elected members. With only nine more parliamentary sitting days scheduled for this year, I hope this will be the last general warning I will have to give.

PD 16/11/1995, p 3407
VP16/11/1995, p 394

Resolution of the Senate Requesting Attendance of a Member Of The Legislative Assembly before a Senate Select Committee

SPEAKER ROZZOLI: reported receipt of the following letter from the President of the Senate of the Commonwealth of Australia:

> Dear Mr Speaker
>
> The Senate acquaints the Legislative Assembly with a resolution agreed to by the Senate this day, which is, in relevant part:
>
> That the Senate requests the Legislative Assembly to require the attendance of the following person before the Senate Select Committee on the Functions, Powers and Operation of the Australian Loan Council to provide public evidence:
>
> The Honourable John Fahey MLA.
>
> The Senate refers the Legislative Assembly to the First and Second Reports of the Senate Select Committee on the Functions, Powers and Operation of the Australian Loan Council, concerning this resolution, copies of which are enclosed.
>
> KERRY W. SIBRAA
> President
> Parliament House
> Canberra
> 5 October 1993

The Speaker then informed the House that as such a request was without known precedent in the New South Wales Parliament he had sought the advice of the Crown Law Officers, and having had the benefit of that advice, suggested that the House should not take any further action in regard to the matter.

The Speaker observed that the Senate recognised, by requesting the attendance of a member before a select committee instead of demanding that the House require a member to attend before a select committee, the sovereignty of the New South Wales Parliament and the implication in the Commonwealth Constitution that the various State Parliaments would not interfere with each other.

Whilst the Legislative Assembly could and would rightfully claim the right of attendance of its members to its own service to direct otherwise would not have legal force. The Assembly could not by resolution change the law. Further, that if the Legislative Assembly demanded the Premier to attend the Senate Select Committee, such a direction would be ultra vires the powers of the House in that the Assembly only possessed powers to direct its members in regard to its own functions and authorities.

The Speaker added that the concept of responsible Government required Ministers to be responsible to the Parliament to which they have been elected and, in this case, if the House

did demand that the Premier attend the effect would be to unlawfully bring the Premier to account before another Parliament.

The attendance of the Premier was requested by the Senate in his official capacity as leader of the Executive Government in New South Wales and in that capacity it would not be competent for this House to direct the Premier in the exercise of a discretion which was his alone to exercise or not.

The Speaker concluded that the House was thus not empowered to make a demand of the Premier in the matter and as a matter of courtesy, the Speaker would convey these observations to the President of the Senate.

PD 19/11/1993, pp 5916-7
VP 19/11/1993, pp 607-8

Debate – Display of maps

SPEAKER ROZZOLI: directed that in future debates in which members wished to refer to maps and similar graphic material, such material should be displayed in the Speaker's Square at least one day prior to the debate and should thereafter be displayed on each sitting day on which the bill was listed for debate until the debate was concluded. The Speaker further ruled that if after the commencement of the debate the material was not on display, the bill would be precluded from being debated on that day.

The Speaker added that graphic material should be identified by clear word description and for abundant clarity, should be referred to by such description in the debate.

VP 01/05/1992, p 290
PD 01/05/1992, pp 3360-1

Debate – Quoting Documents

ASSISTANT SPEAKER FRASER: I point out to the member that if she continues to quote from purported letters from constituents she should identify the source of the document and the person. That is normal parliamentary procedure. Quoting information in Hansard without identifying the source could lead to people being misled.

PD 18/9/2018 p 54

SPEAKER ELLIS: The following principles were enunciated during the course of debate on 5th December, 1967:

The Leader of the Opposition will no doubt be familiar with a statement in *May* at page 458:

> Another rule, or principle of debate, may be here added. A Minister of the Crown –

> Of course, this could apply to the Leader of the Opposition as well –
>
> is not at liberty to read or quote from a dispatch or other state paper not before the House, unless he be prepared to lay it upon the table.
> This restraint is similar to the rule of evidence in courts of law, which prevents counsel from citing documents which have not been produced in evidence. The principle is so reasonable that it has not been contested…
>
> It seems to me that those statements cover this situation fairly accurately.
>
> If the Leader of the Opposition is prepared to table the statement and does so, I shall allow him to proceed (to quote from the document).
>
> When I say "table it" I do not think that the Leader of the Opposition may table (i.e. Present it to Parliament) a document in the strict parliamentary sense; he places it on the Table for the benefit of the House.
>
> . . . . . .
>
> The position is that the Leader of the Opposition has, in substance, referred to a document and has said that he is willing to lay it on the Table of the House. If he proceeds to quote from it he must do that in fairness to the House.
>
> . . . . . .
>
> The Leader of the Opposition (or any other private member) has no right to lay a document on the Table in the sense in which Ministers lay documents on the Table to form part of the Record, but he has the right and he is obliged to do so when the Speaker directs him, to place it on the Table and make it available to honourable members. There is a slight, but important, technical difference. This document is not being laid on the Table; it is being placed on the Table so that it will be available to all members.

PD 05/12/1967, pp 4086-92

SPEAKER ELLIS: The simple practice is that when an honourable member seeks to quote from a private letter or a private document he is liable to be interrupted at any time by the Speaker of his own volition or at the request of any honourable member, and asked whether he is prepared to place the document on the table and in that way make it available to all honourable members. Should the honourable member decline to do so the Speaker at once orders him to refrain from further quotation from the document.

If the honourable member has already quoted from the document before the interruption the Speaker does not order him to place it on the Table. If the honourable member says he is not prepared to place the document on the Table to make it available to all honourable members he must at once cease further quotation but he is allowed to refer to the

document without precisely quoting from it. This has been the practice of the House for many years.

Lest there should be any misunderstanding he said he should say also that some slightly different considerations apply to Ministers quoting from departmental reports of a private nature. These are regarded as confidential matters and the public interest may arise. In these circumstances Ministers are not forced (i.e. by the Speaker) to table such documents. He hoped that clarified the situation.

PD 13/10/1971, pp 1876-7, and PD 14/10/1971, pp 1947-50

Debate – Reading Speeches

SPEAKER ELLIS: There has been a long-standing rule in this Parliament followed with considerable flexibility and tolerance, I must say, that an honourable member must address the House in his own words and not read from written and previously prepared speeches. If the practice of reading long speeches or material prepared by someone outside the House were to be tolerated, then obviously speeches written by other people could be read and the time of the House taken up in considering arguments of persons not members of Parliament whose views perhaps in the opinion of some people are not deserving of Parliament's attention. In effect this of course would be giving to probably unknown persons an opportunity of having their views expressed on the floor of the House and placed on an equal standing with those of honourable members.

For these reasons it has been an invariable practice, except in the case of Ministers, especially when delivering introductory or second-reading speeches or when dealing with complicated or technical details, to discourage the reading of material or comment of outside persons, and of written speeches. The honourable member may make use of copious notes in delivering his speech. Of course there are obvious and abundant reasons for allowing him so to do. Not all honourable members are equipped with such oratorical ability that they are able to deliver speeches without reference to notes. If the honourable member is referring to copious notes I think he is in order. If he has a written speech and he has given a copy to *Hansard* or the press, I feel impelled to discourage him from adopting that course and proceeding along those lines.

PD 17/09/1968, pp 919-20

Duties of the Speaker in relation to the Questions and Answers Paper and the Business Paper

SPEAKER ELLIS: Yesterday the honourable member for Cronulla asked me a question concerning the duties and functions of the Speaker in relation to the *Questions and Answers* paper and the business paper. He expressed some concern lest an honourable member

might disown a question that had been altered by the Speaker, and then seek to assert that it was a question of the honourable member for Coogee (the Speaker's electorate). I promised to let the honorable member for Cronulla and the House have a considered reply.

It is, and has been since time immemorial, the bounden duty of the Speaker to exercise supervision over the business paper and the *Questions and Answers* paper and I have done this carefully since my election to the Chair. Honourable members will appreciate that when a matter appears on the business paper or the *Questions and Answers* paper it becomes a privileged statement, and the author is protected under the Defamation Act from all liability. It is therefore essential that the Speaker exercise the greatest care to see that no scandalous or improper matter appears on the printed paper unless there are compelling reasons for allowing it. He must also see that all matters that are printed comply with the standing orders and the forms and practices of the House.

In discharging this duty I have frequently altered questions on notice and also notices of motions, sometimes in consultation with the honourable member involved, but if this has not been possible or if he has refused to concur in my considered suggestions and has not asked that the material be withdrawn, I have exercised my own independent impartial judgment and made the alterations that I have considered proper having regard to my duty in the matter. For example, on one occasion I felt it my bounden duty to invite the attention of the honourable the Leader of the Opposition himself to what I considered to be an improper imputation in a question that he sought to place on the *Questions and Answers* paper.

As a result of the views expressed by me, the Leader of the Opposition withdrew the question.

Frequently, honourable members on both sides of the House seek my advice and the help and guidance which it is my duty to give upon the form or propriety of questions and notices of motions that they had in mind. For instance, the notice of motion under Standing Order 49 in regard to crime in the community, moved last week by the honourable the Leader of the Opposition, was in the form drafted by me at the request of the Leader of the Opposition. It was typed in my office and used by the Leader of the Opposition himself in place of one that had been proposed by him which was in my opinion totally and completely out of order on a number of grounds and in the House would have been dealt with accordingly.

I appreciate fully that there will be occasions when my actions in discharging this duty will cause disagreement on the part of some honourable members. This is a hazard of the political battlefield, but I am induced to believe that there will always be ninety-two other honourable members ready to recognize confused thinking, and quick to condemn political stratagem attempted at the expense of the integrity of, and the respect enjoyed by, the Chair. I am induced to hope also that all honourable members will agree that they are receiving from the Chair maximum and completely impartial co-operation, help, and guidance coupled with an earnest endeavour to uphold the dignity of the office and the integrity of the parliamentary institution. This help and guidance will still be offered from

the Chair despite the events of last week, and despite the occasional protestations of any honourable member.

It is, and would be, highly improper for any honourable member to suggest that a question, altered by the Speaker to make it conform to the requirement of the forms and practices of he House, is no longer his own question but a question of the honourable member for Coogee. That would be as manifestly absurd as an honourable member's repudiating a speech upon the ground that *Hansard* had put order and dignity into his otherwise confused and ungrammatical oratory. In the discharge of the duties of Speaker I do not know the honourable member for Coogee, though I am informed by honourable members on both sides of the House that he is an earnest and pleasant fellow.

PD 02/03/1967, pp 3717-8

Questions and Debate based upon Newspaper Reports

SPEAKER ELLIS: The more one reflects upon this problem – I have given it a great deal of consideration, particularly during this session – the more one is driven to insist upon the practice in the House of Commons where questions and debate based upon statements in the press are always disallowed. As far as I can discover, it was the practice in this Parliament also until recent years. In recent years, it appears that the practice has become somewhat confused – Speakers sometimes following the House of Commons practice, at other times permitting the matter to proceed if the member concerned vouched for the accuracy of the press reports, and at other times not enforcing the rule at all. One can readily understand the development of this inconsistency because in a great number of cases an honourable member wishing the canvass material published in a newspaper can very often achieve his desire without reference to the newspaper at all, and in this way the strict House of Commons practice may often be subverted. The temptation, therefore to a Speaker to allow departure from the strict House of Commons rule is somewhat compelling. However, recent experiences in this Parliament have emphasized the difficulties which flow from allowing departure from the strict rule that Questions and debate based upon newspaper articles are not permissible unless the honourable member raising the matter assures the Speaker and the House that the material published is reported accurately, and accordingly he himself accepts entire responsibility for the correctness of the statements as published.

I have given a great deal of consideration to this problem and I now announce that this is the practice upon which I will insist in the future. The honourable member asks me what are the consequences of the fact that it now appears that last week the Honourable the Leader of the Opposition gave to the Chair and the House an assurance that statements published in the press, which he was quoting, were, in fact, accurately reported whereas it would appear that some of the statements attributed by the newspaper to the headmaster of Barker College were, in fact, not made by him at all. In broad generality, if an honourable member assures the House that material or facts reported are true and accurate when, in fact, this is not so, the honourable member could be held to be in contempt of Parliament

and therefore guilty of a breach of Privilege. That would, however, be a matter for the decision of the House itself, and not for the Speaker to decide.

PD 01/11/1967, p 2697

Use of Mobile Phones and BlackBerrys

SPEAKER TORBAY: I wish to make a statement in relation to the proper use of mobile phones and mobile devices such as BlackBerrys in the Chamber, in the Press Gallery, and in the other galleries of the House.

Consistent with a previous ruling of 18 October 2007, I remind Members that it is in order for Members to refer to notes on their BlackBerrys, but not to read material verbatim from them, when addressing the House. I consider referring to a BlackBerry to be no different to referring to hard copies of written notes, to which the same rule applies. This rule is in place in order for the authorship of the material not to be brought into question.

It is also in order for BlackBerrys and mobile phones to be used to send messages and e-mails in the Chamber and in the Press Gallery, so long as they are set on silent mode and the business before the House is not disrupted. Visitors in the galleries should also not send text messages if that causes disruption.

It is not in order for Members, members of the Press Gallery and visitors in the public galleries to use the camera function on mobile devices to take unauthorised photographs in the Chamber.

Further clarification on the rules that apply to photography in the Chamber is contained in the guidelines that I tabled in the House on 11 March 2009.

PD 01/04/2009, p 14271

Reproduction of "Parliamentary Debates"

SPEAKER TORBAY: I bring to the attention of members the issue of the republication of extracts from *Hansard* by members themselves or for distribution to third parties and the rebroadcasting of video or audio footage of the proceedings of Parliament or provision of such footage to third parties. Members will shortly receive a briefing note outlining a number of issues in relation to the republication and rebroadcasting of parliamentary proceedings either in the form of *Hansard* or in the form of audio or visual footage available from the Parliament. I want to highlight some of the more important points raised in that briefing note.

In relation to parliamentary privilege, members should be aware that while absolute privilege attaches to the publication of parliamentary proceedings in *Hansard* and on the Parliament's website, any subsequent republication or rebroadcasting by members or

others is not afforded the same protection. Consequently, any person who publishes excerpts from *Hansard* or official footage may be exposed to legal liability if the material is defamatory. The republication or rebroadcast of parliamentary proceedings which includes defamatory material under the common law and division 2 of part 4 of the Defamation Act 2005, section 25-33. Those defences include the defence of justification, the defence of qualified privilege and the defence of fair report.

In relation to the conditions that are set out in the briefing note for the republication or rebroadcasting of parliamentary proceedings under the Parliament's Webcast Conditions of Access and Copyright Notice, I advise members that the conditions are aimed at ensuring, to the greatest extent possible, that any republication or rebroadcast of parliamentary proceedings is considered to be fair and undertaken in good faith.

PD 18/03/2010, p 21730

Taking of photographs in the House

SPEAKER HANCOCK: I remind staff and members of Parliament that photography is not permitted in the precincts around the gallery and in the Chamber. I also remind staff that it is a privilege to be in the Speaker's Square. I advise all staff and members that they are not permitted to take photographs of anyone in that area.

VP 12/10/2017 p 1435
PD 12/10/2017 p 44

SPEAKER HANCOCK: My attention has been drawn recently to incidents of members taking photographs of other members within the Chamber during sittings of the House. I remind members that it is disorderly to take photographs on the floor of the Chamber without the Speaker's permission. Prior permission means that the Chair is able to give appropriate advice to the House so as not to distract other members. I ask all Temporary Speakers to be vigilant about this ruling.

PD 13/10/2015, p 4100

Sessional Order 108A - Community Recognition Statements

SPEAKER O'DEA: I draw the attention of members to Sessional Order 108A regarding community recognition statements. In particular, I remind members that community recognition statements are intended to highlight the efforts and achievements of people within our local communities. Community recognition statements must not contain matters of policy, requests for the Government, the House or another body to take or not take some form of action, or criticisms or negative reflections on any person, including members, office holders, the Government, the Opposition or a third party. Without giving particular examples, there have been transgressions recently and I ask members to be conscious of the intent of and the rules regarding community recognition statements.

PD 7/8/19, p 34

SPEAKER HANCOCK: Order! The House will now proceed with community recognition statements. I remind members that the call is at the discretion of the Chair. The purpose of this procedure is to give the maximum number of members an opportunity to make a community recognition statement. There is no list of members who wish to make a statement, and the giving of statements is not proportional. The call is not strictly a rotation between Government and non-government members, although if members from both sides wish to make a statement the call should alternate. A member may make a second community recognition statement if the Chair is satisfied that no other member is seeking the call to give his or her first community recognition statement. The call is purely at the discretion of the Chair. In future, the Whips will line their members up. Members will not jump up as one and seek the call by screaming at the Chair. Members should organise themselves so that the giving of community recognition statements progresses in an orderly fashion. The alternative is to return to community recognition notices.

PD 26/03/2013, p 19378

SPEAKER HANCOCK: relating to the new sessional order regarding community recognition notices:

"The purpose of the new procedure is to enable members to have notices of an uncontroversial nature formally agreed to by the House. It is envisaged that community recognition notices will include notices of a predominantly local or private nature, such as to congratulate a particular person or group of people for an achievement, to recognise charity work and retirements, to draw attention to fundraising events and sporting awards, and to give thanks or offer condolences to people in local communities. The relevant sessional order specifically states that a community recognition notice must not contain:

(a) Matters of Policy;
(b) Requests for the Government or the House, or any other body to act or not act; or
(c) Criticisms or negative reflections on any person, including Members, Office Holders, the Government, the Opposition or a third party.

The Speaker has discretion to rule out any notices that do not conform with the standing orders, and I advise all members that I will not be accepting any lodged community recognition notices that contain matters of a controversial nature. Members will still retain the option of giving general notices orally in the House.

PD 15/02/2012, p 8253

Sessional Order 249A - Temporary Removal of Members

SPEAKER HANCOCK: I remind members that under the recent changes to the sessional orders the Chair now has the option to order members from the Chamber for up to three

hours. My expectations is that when a member is directed to leave the Chamber under the newly conferred power, the Chair will stipulate the length of time the member must remain outside the Chamber before returning. A member so directed to leave the Chamber will not be required to leave the parliamentary precincts. If, however, any member refuses to leave the Chamber when so directed, that member will leave him or herself open to being called to order and removed in accordance with standing order 249.

I might add that this is not to be regarded as a "sin-bin" sessional order. My reason for introducing this sessional order is that I am extremely reluctant to remove members from the Chamber who have been called to order on three occasions in the knowledge of the ramification of that action is removal not only from this Chamber but also from the members' office and this building. For country and regional members such a ramification seems particularly unfair.

Under this sessional order members may be removed from the Chamber for half an hour, one hour, two hours – indeed, any length of time up to a period of three hours at the discretion of the occupant of the chair.

PD 1/05/2012, p 10796

Terminology re passage of legislation

SPEAKER HANCOCK: I wish to make a statement regarding the implementation of the new sessional orders which I adopted on 4 April 2012. As members would no doubt be aware, amongst the changes adopted was a change in the terminology regarding the passage of legislation with the reintroduction of the traditional first, second and third reading stages. As those changes came into effect only today, the current *Business Paper* does not utilise the terminology as at the time of its production the terminology used in the *Business Paper* was correct. However, subsequent *Business Papers* will be produced using the current terminology and the online bills database will use the current terminology.

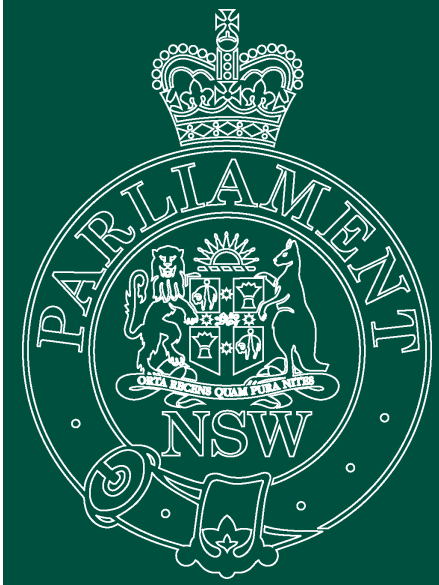
PD 1/05/2012, p 10782

Use of Social Networking

SPEAKER HANCOCK: I will clarify the statement made yesterday in relation to the use of mobile phones and tweeting in the Chamber. A number of members and others have expressed concerns via tweets, emails and conversations. I take this opportunity to inform members that my comments were not intended to imply a blanket ban. As noted in the more traditional press yesterday, the question of the contribution of social media to democratic debate and whether that should extend to a two-way conversation during Chamber proceedings has not been settled, despite the deliberations of a number of parliamentary committees both in Australia and overseas.

Members who choose to participate in such social engagements are reminded that tweets are not proceedings of the Parliament. As such, they do not attract parliamentary privilege and would be subject to the normal laws of defamation. There is potential for certain use of social media to possibly give rise to the types of statements that would traditionally be considered in breach of standing orders on contempt, or involve reflections on members of the Chair. That would be considered disorderly. Whilst tweeting might be at the cutting edge of public engagement, the standing orders are framed around traditional verbal debate in public between elected members. I ask all members not to tweet comments that would be disorderly if verbalised in the House. To reiterate, my comments yesterday were not intended to imply a blanket ban but rather to protect members from inappropriate tweeting in Chamber.

PD 4/4/2012, p 10689



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