



48th Presiding Officers' & Clerks' Conference 2017

Sydney, 2-7 July 2017

“Striking the Balance: Impartiality and
representation in the Queensland parliament.”

Paper by Hon Peter Wellington MP
Speaker of the Legislative Assembly
Queensland Parliament

This aim of this paper is to describe the ways in which the Speakership of the Queensland Parliament currently operates, to consider the ways in which this differs from the traditional Westminster style Parliament and indeed from previous Queensland Parliaments, and to reflect on the particular demands placed on the Speakers of small Parliaments.

The Parliamentary Speaker and tradition

The tradition of Speakership in the Westminster parliamentary system is a long and enduring one, commencing with the appointment of the first British Speaker, Sir Thomas Hungerford, who was appointed in 1377. From these earliest times, the Speaker has been the mouthpiece or representative of the House, speaking on behalf of the House in communicating its deliberations and decisions, to the monarchy, the Executive and also others.

The Speaker represents, in a very real sense, the right of freedom of speech in the Parliament, which was hard won from a monarchical Executive centuries ago. The Parliament must constantly be prepared to maintain its right of...freedom of speech, without fear or favour.¹

Amongst the numerous powers, responsibilities and functions vested in Speakers via the constitution, standing orders and conventions, and in addition to being the spokesperson of the House, the main functions of the Speaker are to preside over the debates of the House and enforce the rules of proceedings, and to oversee the administration of the House, the services provided to Members and the operation of Parliament House.²

Given these functions, the political impartiality of the Speaker is one of the office's most important features and is considered the hallmark of good Speakership.³ The ability of the Speaker to regulate the Parliament and to act with full impartiality is very important for the democratic functioning of the Parliament.⁴

This impartiality has developed over centuries in the Westminster system to the point where, in the House of Commons in the United Kingdom for example, the Speaker, once elected, severs all links with their political party and, by convention, is secured continuity of office by (a) only rarely being challenged in their electorate at the next general election and (b) regularly being re-elected as Speaker despite any change of government.

According to May:

Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized. He takes no part in debate either in the House or in committee. He votes only when the voices are equal, and then only in accordance with rules which preclude an expression of opinion upon the merits of a question.⁵

Consequently, in the United Kingdom, the Speaker does not take part in debate in the House and votes only when the votes are equal and then without expressing opinion about the merits or otherwise of the proposition. Casting votes are always exercised in a manner which enables further discussion and importantly, maintains the status quo if a majority cannot be obtained.⁶

¹ Speaker Snedden, H.R. Deb. (27.5.1976) 2598.

² http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_3_-_The_Speaker

³ http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice6/Practice6HTML?file=Chapter6§ion=01&fullscreen=1

⁴ <http://www.australiancollaboration.com.au/pdf/Democracy/Roles-speaker-president.pdf>

⁵ Erskine May's Parliamentary Practice 24th Edition, p61

⁶ Erskine May's Parliamentary Practice 24th Edition, pp61 and 420-423

The scope of a Speakers' participation in debate and expression of opinion is worthy of further consideration because, while relevant and desirable in large Houses, like the United Kingdom, these ideals present difficulties and are often impractical in smaller parliaments, such as those in Australia, even at the Commonwealth level.

The Parliamentary Speaker and impartiality in Australia

The Speakership in Australia differs in some respects from current Westminster practice as its development during the 20th century followed different lines.

In Australia, since the early years after Federation, the practice has been for the Speaker to be a member of the governing party and for the Speaker to change with the change of government. This means Speakers are typically politically affiliated – they are obliged to continue to represent their constituents, are not required to sever ties with their party, are able to attend party meetings (although this is typically a matter for them) and even campaign during elections (there being no practice of re-electing the member who served as Speaker in the preceding parliament whether the government changes or not).

Notwithstanding these facts, successive Speakers have striven to discharge their duties with impartiality and as a rule have been sufficiently detached from government activity to ensure what can justly be claimed to be a high degree of impartiality...⁷ As a rule, Speakers do not participate in the actual debating and law-making processes of the House and, because the Speaker does not vote in ordinary divisions of the House, the political party to which she or he belongs loses a vote on the floor in daily sittings.⁸

Impartiality in Queensland:

In Queensland, with potentially small majorities, where governments are not able to give up the contribution of even one Member⁹, the Speaker has the following rights;

In terms of voting, the Parliament of Queensland Act 2001 provides-

At a meeting of the Assembly or a Committee of the Whole House –

- (a) a question is decided by a majority of the members present and voting; and*
- (b) the Speaker or Deputy Speaker presiding-*
 - (i) has no deliberative vote; but*
 - (ii) if the votes are equal, has the casting vote.*

The act clearly gives the Speaker a right to a casting vote. Not surprisingly, Speakers in Queensland, if they are a member of a party, have exercised their vote consistently with the vote of their party. There has been no tradition in Queensland of Speakers casting their vote with the status quo.

In Queensland, previous Speakers have not only cast their vote on divisions when it has been necessary to do so, but have presided over debates in which they have an interest in the outcome.

For example, in 2000, Speaker Hollis, who presided over a parliament which was hung at various stages, used his casting vote to vote down a motion of no confidence in himself as Speaker¹⁰. Speaker Hollis not only voted in the debate, but presided in the chair during the debate. Speaker

⁷ <http://www.anzacatt.org.au/parliament/general/anzacatt/anzacatt.nsf/0/D81A27F393E93089CA256D630008D30B>

⁸ <http://www.australiancollaboration.com.au/pdf/Democracy/Roles-speaker-president.pdf>

⁹ <http://www.anzacatt.org.au/parliament/general/anzacatt/anzacatt.nsf/0/D81A27F393E93089CA256D630008D30B>

¹⁰ 17 October 2000.

Hollis also presided over debate on a number of dissent motions against his rulings¹¹ but also cast his vote on a question of dissent to his own ruling¹².

In 1997 Speaker Turner also presided over a hung parliament and presided over a motion of dissent to his own rulings but as no division was called, was not required to cast his vote.¹³

In regards to expressing an opinion on the merits or otherwise of a question, standing orders in Queensland give a Speaker exercising a casting vote the right to give reasons for the way in which they cast their vote. Standing order 109(2) provides-

Every member present in the House when the question is put with the bars closed must vote except the Speaker, who shall have a casting vote if the votes are equal. The Speaker may give reasons for the casting vote and those reasons are entered in the Record of Proceedings.

The precedent in Queensland has been to enable Speakers to speak on matters they feel strongly about, both in and out of the chamber.

For example, Speaker Turner was granted leave by the House to speak in the debate on the Weapons Amendment Bill 1996, a government (his own party's) bill.¹⁴ He spoke as the member for Nicklin in speaking against the bill although the motion (to grant him this leave) was controversial in itself. Several members of Parliament spoke against the motion citing Westminster practice and conventions as well as Erskine May, and stating that granting such leave would set a 'dangerous precedent' and would be 'totally wrong'.

Leave was granted and, in speaking against the Bill, Turner (as Member for Nicklin) stated that:

"It gives me no great joy to take this action. However, my conscience dictates that I do so...The Weapons Amendment Bill is the most divisive legislation to have ever come before the Parliament since I entered this House in 1974. It contains the most unAustralian proposals this nation has ever seen."

Despite his strong objection to the bill, Speaker Turner was presiding when the minister replied and when the second reading, third reading and long title questions were put. Despite being in a hung parliament, the Speaker's vote was not required as the bill had the general support of both sides of the House.

In 2008, in another example, Speaker Reynolds spoke from the floor of the chamber on the positive effects of the annual appropriation on his electorate:

*"It is with a great deal of pleasure that I vacate the Speaker's chair to represent my constituents in the electorate of Townsville by making a contribution to the 2008-09 state budget debate. I strongly and warmly welcome the first budget of the Bligh government, which delivers big dollars to the city of Townsville in health, education, roads, emergency services and community services".*¹⁵

In 2011, Speaker Mickel was very critical, both in and out of the House over many months, of the government's parliamentary reform agenda.

His concerns about the role and status of the Office of Speaker were first evident in a letter to the Clerk, dated 2 March 2011, regarding media suggestions that his recent overseas travel had been somehow inappropriate. He wrote that:

¹¹ 16 September 1998 Hansard p2302; 9 November 2000 Hansard p4269; 22 July 1999 Hansard p2910; 2 March 2000 Hansard p258

¹² 2 March 2000, Hansard, p258

¹³ 21 August 1997 Hansard p3142.

¹⁴ 30 October 1996 Hansard p3695; Votes and Proceedings No. 35 p306

¹⁵ 6 June 2008 Hansard p2112

*"The office of the Speaker is already under threat from the recommendations of the Review of Queensland Parliamentary Committee System currently under consideration by the government without there being a perception, however baseless, arising from media reports and associated claims that I have somehow acted improperly, requiring the intervention of the Premier."*¹⁶

Then on 28 April 2011, in a letter to both the Leader of Government Business (Hon Judy Spence MP) and the Treasurer (Hon Andrew Fraser MP), he raised concerns regarding the Cabinet Budget Review Committee's (CBRC) consideration of a proposal (about which he had no knowledge) to examine options for committee meeting space (such as relocating corporate services). Given the Speaker's responsibility for the Parliamentary Service and the Legislative Assembly under the *Parliamentary Service Act 1988*, he stated:

*"I would normally not need to complain about CBRC providing funds to the Parliament. However, in the absence of evidence to the contrary this matter shapes as a very serious interference by the executive in the affairs of the Parliament. Without any consultation with the Speaker, the executive appears to have taken upon itself the task of preparing for the relocation of particular functions of the Parliamentary Service from the Parliamentary precinct. I am very apprehensive that the next step in this process is that the executive will take it upon itself to remove all corporate service functions from the management responsibility of the Parliamentary Service and allocate them to one of the executive's shared service providers".*¹⁷

On 17 June 2011, the Parliamentary Service and Other Acts Amendment Bill 2011 (his own party's bill) was introduced and he was very critical of the Bill both in and out of the House, although he did not take the chair during the debate of the bill. The Bill transferred administrative authority from the Speaker to the Committee of the Legislative Assembly.

On 2 August 2011, when the Bill was debated in the House, Independent Member for Gladstone, Mrs Cunningham, quoted Mr Mickel from a paper he had delivered the previous month (July 2011) at a Presiding Officers and Clerks Conference, stating:

*"As the present Speaker, Labor's John Mickel, complained publicly at a national meeting of presiding officers and clerks of Parliament in Brisbane last month, he could not understand 'how we started out with a review committee to examine the Parliament's committee system so as to strengthen the oversight of legislation and improve accountability, and ended up not just with an overhaul of the committee system, but also my position of Speaker skewered and the balance in the relationship between the executive and the legislature fundamentally changed.'"*¹⁸

His criticism of the government's reforms were also reported in the press with The Australian reporting on 10 August 2011 that:

*"Mr Mickel... has been heavily critical of recent changes to the running of parliament, arguing they have taken much of the power away from his independent position. His concerns centre around the handing of control of the parliamentary precinct to the government and the exclusion of the speaker from the main rule-making management committee of the parliament, which he argues is a serious violation of the separation of powers"*¹⁹

and the Courier Mail reporting the next day that:

¹⁶ <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2011/5311T3989.pdf>

¹⁷ <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2011/5311T4381.pdf>
<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2011/5311T4380.pdf>

¹⁸ https://www.parliament.qld.gov.au/documents/hansard/2011/2011_08_02_WEEKLY.pdf

¹⁹ <http://www.theaustralian.com.au/national-affairs/state-politics/queenslands-speaker-john-mickel-to-leave-in-protest-over-parliamentary-reforms/news-story/1f4bac6f4289e00cf300535d607fbee>

“Mr Mickel has taken aim at reforms of the Queensland Parliament which strip the Speaker of responsibility for managing the precinct and hand it to a bipartisan committee of senior MPs... Mr Mickel said he had taken a stand against the reforms because they were an affront to the Westminster traditions to let the executive of government run the parliament.”²⁰

So grave were his concerns about the reforms, that on the 10 August 2011, he indicated he would resign at the next election and subsequently²¹ labelled the reforms an “outrageous abuse of executive power”.

A test of the Queensland practice:

My appointment to the office of Speaker in the 55th Queensland Parliament in 2015 was the first time an Independent member held that office in Queensland since the 1890s.²² As per my undertaking with both parties upon the commencement of the 55th parliament, I have not abstained from any vote where a division has been called and have only remarked on my reasons for casting my vote a particular way on a few occasions when I felt explanation was warranted or deserved.

On 6th April, the Deputy Leader of the Opposition, Mr John-Paul Langbroek MP, as Acting Leader of the Opposition, wrote to me, requesting that I not sit as Speaker during the proposed debate nor vote on any proposed laws arising from the Taskforce into Organised Crime Legislation report. His request was made on the grounds that my impartiality as Speaker to preside over the debate on the imminent legislation was in doubt because of the position I had publicly stated in regards to the former LNP government’s criminal association laws (known as the VLAD laws).

In short, the request sought to deny my voice and a vote on a matter that was not yet even before the House, a matter which I had actually voted on during a previous parliament, and with no grounds (no authority or precedent) to support the request.

On the basis that Mr Langbroek had published his letter to me, I opted to make a statement to the House at the next sitting in response to his letter. In my statement, I advised that I would vote on the legislation if my vote was required and I noted that if I were to agree to such a request, I would also have to deny my vote on other issues about which I have expressed strong concerns in the past. In denying myself the right to use my casting vote, I would also be breaching the earlier undertaking I had made to the Leader of the Opposition to vote on all questions and not ‘trap’ Temporary Speakers in the chair.

In any case, it is not the practice in Queensland for Speakers to preside over the debate of bills in the House and such duties regularly fall to the Deputy Speaker and panel of Temporary Speakers.

On the same day, I spoke from the floor of the Chamber by way of a personal explanation to respond to attacks against me in the media for my stance on the criminal organisations legislation. I also reminded the House of my commitment to both parties to not abstain from voting on matters before parliament and undertook to, as always, cast my vote if necessary according to the merits of the question before the House.

Conclusion:

In summary then, there are numerous examples in the Queensland Parliament where a Speaker has not only spoken about a Bill before the House, whether in public or in the House, but has also presided over and even voted on matters directly concerning them.

The Westminster model of parliament is precisely that – a model – and jurisdictions not only across Australia but around the world have, by necessity, effected deviations from the strict rules

²⁰ <http://www.couriermail.com.au/news/queensland/speaker-john-mickel-quits-in-protest-after-having-powers-handed-to-committee-of-mps/news-story/3d6834ebb3b30895223fe79255b6a285?sv=da0465af653b2b5f19fcd345aeeca38d>

²¹ <http://www.queenslandspeaks.com.au/john-mickel>

²² https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_3.18_RoleOfAnIndependent.pdf

that govern parliamentary procedure and practice in order to ensure and protect the capacity for their parliaments to remain effective, representative and democratic.

That Queensland demonstrates this history of departure from strict Westminster procedure is not an indication that the Parliament is not properly governed, nor somehow undemocratic. Rather, it is an indication that Queensland has made adaptations, over time, and by successive Parliaments, which have served the Parliament, the Members and the people.

As Mr Sullivan himself stated, on 30 October 1996, in speaking against Hon Turner's right to speak from the floor as the Member for Nicklin:

“...we are talking about conventions and not hard and fast rules”.²³

²³ <https://www.parliament.qld.gov.au/documents/hansard/1996/961030ha.pdf>