

Chapter 11 Rules of Debate

11.1 Rules of debate

The topic of "debate" entails consideration of the right of members to speak, the rules which must be observed and the power of the Chair to enforce these rules.

The standing orders which pertain to debate are S.O. 49-96. The following Chapter highlights those which are considered the more important.

11.1.1 Right of speech

A member's right to speak is guaranteed by the *Bill of Rights 1688*¹ and the publication of a speech in *Hansard* is protected from action in defamation by s. 27(2)(a)(iii) of the *Defamation Act 2005* which offers a defence of absolute privilege for the publication of the debates and proceedings of a parliamentary body.²

Members desiring to speak must rise and seek the call by calling the Speaker's attention with the words, "Mr/Madam Speaker" (S.O. 55). On one occasion, a member was deemed by the Chair to have forfeited the call due to engaging in conversation.³

A member may only speak once to a question in the House except: the member in charge of the order of the day may seek preaudience when the order is read; in explanation;⁴ in reply; or during consideration in detail of any matter (S.O. 64).⁵

Standing order 61 states that a member may only speak in the following instances:

- (1) To a question before the Chair which is open to debate;
- (2) When moving a motion;
- (3) When moving an amendment;
- (4) When rising to a point of order or privilege;
- (5) To make a personal explanation; and
- (6) In explanation.

Standing order 79 sets out the only circumstances in which a member is able to interrupt another member speaking.⁶ They are to:

- (1) Raise a matter of privilege or contempt suddenly arising;
- (2) Call attention to a point of order;
- (3) Call attention to the want of a quorum;
- (4) Call attention to the presence of visitors;
- (5) Move a closure motion;
- (6) Move "That the member for be now heard"; and
- (7) Move "That the member for be not further heard".

¹ For further information on the freedom of speech see section 2.1 of Part Two.

² Under the Act a parliamentary body is defined as: (a) a parliament or legislature of any country; (b) a house of a parliament or legislature of any country; (c) a committee of a parliament or legislature of any country; or (d) a committee of a house or houses of a parliament or legislature of any country. For further information on the privilege attached to Hansard see section 8.9.4 of Part One and section 3.10.1 of Part Two.

³ PD 20/11/1996, 6310.

⁴ See standing order 61 (6) which provides for members to speak in explanation.

⁵ PD 02/05/1996, p. 728; member spoke again by leave, PD 22/05/1997, p. 937, or by suspension of standing orders, VP 21/06/1996, p. 329.

⁶ Standing orders suspended to allow interruption of a member so that another member could make a first speech, VP 18/06/1996, p. 287.

Certain matters, mainly procedural motions, are not open to debate. These are listed in standing order 80.

Whilst members are granted the right to speak, the House can restrict debate. For example, standing and sessional orders have been suspended to allow the consideration of a bill by Government Members only.⁷

11.1.1.1 Reply

A member has a right to reply only when the member is the mover of a substantive motion (one which is self-contained and which normally requires notice, e.g. a general business motion) or the mover of a motion for the agreement in principle of a bill. Such reply closes the debate.⁸ Ministers are able to reply to private members' statements in accordance with standing order 108.

11.1.1.2 "That member be now heard"

A member may interrupt another member⁹ to move without notice that a member who sought but was not given the call should now be given the call. The question is put without debate or amendment (S.O. 57). If the motion is passed, the member named is given the call. As the object of the motion is to prefer a certain member in the allocation of the call rather than to silence the member speaking, the member interrupted may again seek the call. If the motion is defeated, the member interrupted may resume his or her speech. If the time for the interrupted member's speech has commenced, the clock is not stopped and consideration of the question occurs during the interrupted member's speaking time.

The motion has been used to allow a member to add supplementary observations to a personal explanation after objection had been taken to the member trying to qualify an explanation,¹⁰ to permit a member to speak again to a question,¹¹ and to enable a member to speak in explanation (an objection having been voiced).¹²

When the motion "That the question be now put" has been moved, the motion for a member to be "now heard" may not be accepted by the Chair.¹³ Furthermore, the motion "that the member be now heard" was not allowed during a debate on a motion to suspend standing orders as the standing orders only allow one member other than the mover to speak.¹⁴ The motion has been allowed (although negated) during a mover's reply.¹⁵

⁷ See VP 02/11/2000, p. 849 where the Leader of the House noted that the Government had circulated 160 amendments to the Water Management Bill and that the Opposition had asked for time to consult with stakeholders and as such would not participate in the debate that day.

⁸ Member in reply sought to adjourn the debate and was advised by the Acting Speaker that as mover of the motion he had replied to the substantive motion and could not adjourn the debate. Standing and sessional orders were suspended to allow the putting of the question to be deferred to a later hour, PD 02/05/1996, p. 741; See also warning by Speaker Rozzoli that he has discretion to close debate by calling the Minister in reply, PD 15/10/1992, pp. 7166-7.

⁹ See S.O. 79.

¹⁰ VP 23/09/1890, p. 327.

¹¹ VP 10/02/1886, p. 100.

¹² VP 28/02/1888, p. 302.

¹³ PD 16/12/1924, p. 4674.

¹⁴ PD 27/05/1998, p. 5292.

¹⁵ PD 17/09/1997, pp. 100-1.

11.1.1.3 "That member be not further heard"

A member may interrupt another member¹⁶ to move without notice that the member speaking "be not further heard" (S.O. 58). The motion is not restricted to a specific business type and can be moved at any time. For example, the motion can be moved when a Minister is answering a question without notice¹⁷ or when a Minister is making a ministerial statement.¹⁸ The question is decided without debate or amendment. If the motion is passed the member interrupted loses the call and may not speak again in the debate¹⁹ unless the standing orders or the House provide otherwise. If the motion is negatived, the member interrupted may resume his or her speech if time remains. The clock is not stopped and consideration of the question occurs during the interrupted member's speaking time.²⁰

The motion may not be moved on a member who is speaking on a point of order. If the motion is negatived the Chair will not accept a second motion during the same speech.²¹

The question "That the member be not further heard" is often put during debates on motions to suspend standing and sessional orders as a closure motion cannot be moved. Paragraph 6 of standing order 365 (suspension) provides that closure shall not apply to a motion for the suspension of standing and sessional orders. For example, debate proceeded on a motion to suspend standing and sessional orders when a member moved, "That the question be now put". The Speaker advised the House that such a motion was not in order whereupon the member subsequently moved "That the Member speaking be not further heard", which was agreed to on division.²²

11.1.1.4 "That member be further heard"

If the Speaker has directed a member to cease speaking, any member may move that that member "be further heard" (S.O. 60). The question is decided without debate or amendment.

On one occasion, the Speaker ruled that the motion was out of order when the member had not commenced speaking.²³

11.1.2 Manner of speech

The content of speeches is also to some extent regulated by the standing orders. Standing order 76 states that a member shall be relevant to the subject matter of the debate. Using offensive words against any member of either House²⁴ or imputations of improper motives or personal reflections on members²⁵ are also contrary to standing orders.

¹⁶ See S.O. 79.

¹⁷ PD 23/11/1995, pp 3933-4.

¹⁸ VP 22/06/2000, p. 636.

¹⁹ PD 14/11/1929, p. 1349 and PD 27/02/1918, p. 3043.

²⁰ Negatived on division, VP 16/11/2000, p. 887; negatived on division VP 22/06/2000, p. 636; VP 25/05/2000, p. 502; VP 25/05/2000, p. 504; 16/08/2000, p. 732; VP 16/08/2000, p. 742; VP 06/05/1997, p. 828; VP 24/09/1997, p. 8; 15/10/1997, p. 134; VP 20/11/1996, pp. 628-9; negatived on casting vote of Speaker PD 01/06/1995, pp. 109-10; carried on casting vote of Speaker, VP 23/11/1995, pp. 441-2.

²¹ PD 12/12/1901, p. 4338; PD 09/11/1921, p. 1596 and PD 01/12/1915, p. 4146.

²² PD 25/05/2000, p. 5860 – 61. Other examples include, VP 25/05/2000, p. 502; VP 25/05/2000, p. 504; VP 16/08/2000, p. 732; and VP 16/08/2000, p. 742.

²³ PD 20/11/1996, p. 6310.

²⁴ See S.O. 72.

²⁵ See S.O. 73.

Members in their speeches are not permitted to:

- quarrel with other members (S.O. 74(2));
- anticipate discussion of a matter on the business paper (S.O. 77);²⁶
- reflect on a previous decision of the House unless debating its rescission (S.O. 71);²⁷
- use offensive words against the Sovereign or Governor (S.O. 72). This does not preclude the moving of a substantive motion regarding the conduct of the Governor;²⁸
- use offensive words against a member of the judiciary²⁹ or a statute (unless moving for its repeal) (S.O. 72); or
- make imputations of improper motives and personal reflections on members of either House other than by substantive motion. (S.O. 73).

In relation to the anticipation of discussion of matters on the business paper, it should be noted that there are a number of exceptions. Speakers have ruled that matters may be raised during Question Time for the purpose of eliciting facts that may be used in subsequent debate,³⁰ and that on motions “That government business take precedence” brief reference can be made to motions on the business paper.³¹ In 1966 Speaker Ellis ruled that the anticipation of debate rule did not apply to ministerial statements commenting that “a ministerial statement is a form of proceeding by which a Minister informs all honourable members so that they may better equip themselves to take part in the subsequent debate”.³² Speaker Ellis was also of the view that the rule did not apply to matters on the Questions and Answers Paper noting that “...there can be no debate in answering a [written] question.”³³

In addition, Speaker Ellis has also ruled that the anticipation rule did not apply if there was no likelihood that the matter would come before the House in a reasonable time.³⁴ What is considered to be “reasonable time” is dependent on the circumstances of the particular case. The real test appears to be whether the matter on the business paper will be brought before the House before a certain event takes place. For example, on matters of great urgency the anticipation of debate rule may not be applied.³⁵ However, if a Minister can assure the Speaker that a decision on a particular matter would not be made before the House had an opportunity to debate it, the matter would be deferred.³⁶

²⁶ Speaker did not accept notice of a matter of public importance because it anticipated debate on the *Appropriation Bill*, VP 23/6/99, p. 159.

²⁷ Following a motion to suspend standing and sessional orders the Manager of Opposition Business reflected on a previous decision of the House. The Speaker reminded the member that the House had already made a decision on the matter. PD 28/11/01, p. 19056.

²⁸ PD 16/09/1919, p. 807; PD 27/06/1918, pp. 391-2; PD 04/07/1918, p. 544.

²⁹ Speakers’ rulings have indicated that reflections can be made on the conduct of a judge from another State who is acting in New South Wales as a Royal Commissioner PD 10/08/1920, p. 129. However, other rulings have indicated that attacks on any judge, including those acting as a Royal Commissioner could only be made on specific motion. PD 09/10/1932, pp. 1875-6.

³⁰ Minister allowed to give information regarding a bill on the business paper, PD 07/04/1998, p. 3729, PD 15/04/1997, p. 7508; Speaker ruled that members could elicit facts for future debate, PD 15/11/1994, p. 5010.

³¹ PD 02/11/1967, p. 2776.

³² PD 03/11/1965, pp. 1694-5.

³³ PD 28/10/1971, p. 2470.

³⁴ PD 16/11/1966, pp. 2512-3.

³⁵ See comments of Speaker Ellis, PD 30/09/1971, pp. 1727-8.

³⁶ See comments of Speaker Ellis, PD 17/10/1968, p. 1862 when a Minister assured the Speaker that a decision on the Lane Cove Expressway would not be made before the Loan Estimates were debated and the matter was deferred until then.

The place of speaking, under normal circumstances, is at the Table of the House. Members may speak from their place on the bench if a short speech is to be delivered, if a point of order or privilege suddenly arising is taken or when asking a question during Question Time. A member unable to stand by reason of illness or disability is allowed to address the House seated with the leave of the Speaker (S.O. 56).

The Speaker and other occupants of the Chair are entrusted, as the servants of the House, with power to ensure that the business of the House is conducted in an orderly fashion and in accordance with the standing orders and the principles of parliamentary practice. The Chair exercises a discretion in intervening in debate and will usually only do so if a member's right to speak or be heard is being infringed, a breach of order has been committed, or is called on to decide a point of order.

11.1.3 Reading speeches and quoting from documents during debate

The convention has developed in New South Wales that members are not allowed to read speeches. This is due to the fact that a speech may have been prepared by someone other than the member and as such would provide a voice to someone outside the Parliament. In 1972 Speaker Ellis explained the rule against reading speeches as follows:

*In this House and most other Parliaments it has been a long-standing rule, which has been applied with considerable flexibility and tolerance, that honourable members must address the House in their own words, and not in speeches that could have been prepared for them by someone else. If that were permitted, it would mean that persons who are not members of this House would have a voice on the floor of this Chamber. That is the reason why written speeches are, to put it at its lowest, discouraged.*³⁷

There are however, times when the Chair has permitted members to read from prepared speeches such as when members are referring to complex matters such as economic figures, statistics or other complicated conceptual matters so as to ensure accuracy,³⁸ or when time limits for speeches are heavily restricted.³⁹ It is also accepted practice that Ministers and the Leader of the Opposition (or other member leading in a debate for the Opposition) read prepared speeches at the agreement in principle stage of a bill and that inaugural speeches may be read.⁴⁰

The Chair has also allowed members not actually reading the whole speech but using copious notes to continue.⁴¹ In addition, the Chair has commented that there is a difference between a member reading notes that are his or her own composition and reading something prepared by someone else with Acting Speaker Brown in 1975 commenting:

*Not all honourable members are equipped with the oratorical ability to deliver speeches without referring to notes. Some members are so intent on a particular subject that they prepare their material and do not want to deviate from it so that whatever they say here will be correct and in accord with their thinking.*⁴²

³⁷ PD 31/08/1972, p. 564; See also ruling of Speaker Rozzoli, PD 25/11/1992, p. 9921.

³⁸ See ruling of Acting Speaker Tink, PD 30/06/1992, pp. 4787-8.

³⁹ See ruling of Speaker Rozzoli, PD 10/11/1988, p. 3133 and PD 01/12/1988, p. 4303.

⁴⁰ See ruling of Speaker Cameron, PD 19/08/1975, p. 489.

⁴¹ PD 21/09/1994, p. 3463.

⁴² PD 11/03/1975, p. 4422.

In debate, members are usually discouraged from reading lengthy quotes. Members may read extracts from debates of the current session or newspaper reports of such debate or proceeding provided the reference or quotation is brief and relevant to the matter under discussion or the subject of a personal explanation (S.O. 70). This applies equally to proceedings of the Legislative Council. The rule against quoting from a current *Hansard* does not apply to debates on different stages of the same bill or debate which has already taken place on the Address in Reply during the same session.⁴³

Members may also read extracts from documents other than newspapers or *Hansard* during a speech provided that the quote is brief and the source of the document is properly identified before the member quotes from it.⁴⁴ For instance, members are able to read from letters so long as they identify the person who wrote the letter.⁴⁵

There is no requirement for a Minister to table quoted documents, but he or she may do so on their own initiative, by leave.⁴⁶

Members, other than Ministers and chairs of committees, are not able to table documents (S.O. 264). If, however, a member quotes at length from a document, that document should be made available for the information of all members, if so requested by another member, or else the member speaking must refrain from further quoting it.⁴⁷ There have been, however, a number of exceptions to this rule. In one instance, when the Leader of the Opposition quoted from a letter he had received from a brothel manager the Speaker did not require him to make the letter available to all members provided the Leader of the Opposition handed the letter in question to the Attorney-General or the Premier.⁴⁸ On another occasion, a Minister quoted from a letter not realising that by doing so he would have to make the document available to all members. When a member requested that the author be identified the Speaker noted that the Minister had made a mistake and that the author of the letter was entitled to have their confidentiality protected.⁴⁹

In addition, confidential reports to a Minister which are quoted from do not have to be tabled. Rather, the Minister must judge if it is in the public interest to make the document available.⁵⁰ Furthermore, in situations where a member quotes from a document such as a report that is already publicly available the Speaker does not always insist that it be laid upon the table and made available to all members of the House.⁵¹

⁴³ See Ruling of Speaker Lamb, PD 03/09/1957, p. 290 and ruling of Speaker Maher, PD 15/09/1964, p. 620.

⁴⁴ Acting Speaker ruled that it was not for the Chair to tell members how they should quote from reports. However it was incumbent upon members to use material they quote from reports in an appropriate and balanced context. PD 30/06/1992, p. 4789; PD 17/11/1998, p. 10080.

⁴⁵ See for example, PD 03/03/1994, p. 166; See also PD 11/04/2001, pp. 13694 – 5 where a point of order was taken that a member was reading from letters from a person outside the House in order to give privilege to something recorded in *Hansard* that was not of his making. The Acting Speaker ruled that, if the member gave the name of the writer and vouched for that, and if the letter was not too lengthy, he may continue to read it, otherwise he should paraphrase the letter and to desist from reading it. PD 11/04/2001, pp. 13694-5.

⁴⁶ PD 22/04/1993, p. 1493; PD 28/10/1998, p. 9201; PD 15/11/2001, pp. 18730 and 18746.

⁴⁷ PD 05/12/1967, pp. 4086 and 4089; PD 10/04/1968, p. 788; PD 25/11/1969, p. 3042. Speakers have noted that it is common practice for Ministers to refer to, or quote from, reports from their officers and these papers are not made available to members, PD 28/09/1971, p. 1496.

⁴⁸ PD 11/09/1968, p. 790.

⁴⁹ PD 29/09/1971, p. 1619.

⁵⁰ See ruling of Speaker Ellis, PD 28/09/1971, p. 1499.

⁵¹ For examples see PD 28/10/1971, p. 2466 and PD 29/02/1972, p. 4624.

This obligation to identify documents quoted from can be avoided by the member relating the matter in the third person without actually reading from it⁵² or by summarising the contents of the letters rather than directly quoting from it.⁵³

When quoting from documents, members must not wave newspapers or other documents around and it is not proper for a member to quote as fact statements contained in newspapers, unless that member can verify the accuracy of the report. As Speaker Ellis ruled in 1967 and again in 1968 the rationale behind this rule is that it would be very foolish of the House to debate something that was factually incorrect or did not exist.⁵⁴ In 1993, Speaker Rozzoli ruled that the only obligation upon a member quoting from a newspaper was to provide the date and name of the newspaper and not to vouch for the accuracy of the statement read.⁵⁵ This has become the accepted practice of the House.⁵⁶

11.1.4 General provisions

A number of basic rules and principles governing the conduct of debate are laid down in the standing orders and supplemented by the practice of the House. They exist for the sake of regularity, uniformity, and orderly and acceptable standards for the conduct of the business of the House. In the words of John Hatsell, Clerk of the House of Commons 1768-1820, "It is more material that there should be a rule to go by than what that rule is: in order that there may be a uniformity of proceeding in the business of the House, not subject to the momentary caprice of the Speaker or to the captious disputes of any of the Members".⁵⁷

It is an essential rule that in the House a member may speak only once to a question unless a bill or other matter is being considered in detail. This rule, however, does not preclude the member in charge of the order of the day having the right to pre-audience,⁵⁸ an explanation being given,⁵⁹ or the mover of a motion speaking in reply⁶⁰ (S.O. 64). It is the practice of the Legislative Assembly that when an amendment is moved to a motion in the House, the mover of the motion and those who spoke prior to the moving of the amendment may speak again, but to the amendment only.⁶¹ Those members who speak after an amendment has been moved are deemed to be speaking to both the original motion and the amendment.⁶²

It is a recognised rule that a question, the same as one upon which the judgement of the House has been obtained, cannot be brought forward again in the same session (S.O. 154). This rule is to avoid contradictory decisions and prevent surprises. Otherwise the same question might be brought forward again and again and affirmed and negated according to chance majorities.⁶³

⁵² See rulings of Speaker Ellis, 05/12/1967, pp. 4086-92 and ruling of Acting Speaker Darby, PD 12/03/1969, p. 4477.

⁵³ See ruling of Speaker Cameron, PD 22/08/1974, p. 579.

⁵⁴ See rulings of Speaker Ellis, PD 24/08/1967, p. 788 and PD 10/09/1968, p. 734. For more recent examples see PD 23/02/1989, p. 5199; PD 21/11/1994, p. 5428; PD 22/05/1996, p. 1371.

⁵⁵ PD 04/03/1993, pp. 358-9.

⁵⁶ See for example comment of Deputy Speaker Price, PD 28/09/2006, p. 2568.

⁵⁷ Hatsell, John, *Precedents of proceedings in the House of Commons: with observations*, 1818, Vol. 2, pp. 207-8.

⁵⁸ See Chapter 18 of Part One.

⁵⁹ See section 11.5 of Part One.

⁶⁰ See section 11.1.1.1 of Part One.

⁶¹ PD 02/09/1992, pp. 5408-10.

⁶² PD 10/08/1905, p. 1405.

⁶³ This rule only applies to questions voted on by the House and not procedures to which no vote is taken such as discussion on matters of public importance. See PD 13/11/2002, p. 6678.

11.2 Adjournment of debate

When there is no member speaking, any member who has not spoken to the question before the Chair may move that the debate be adjourned (S.O. 82). This question is put without amendment or debate (S.O. 80). If agreed to, the Speaker will, on request of the member having carriage of the matter, set down the resumption of the debate for a later hour of the same day, tomorrow or a future day. In the absence of the Member having carriage of the matter, the Speaker must set down the resumption of the debate as an order of the day for a later time (S.O. 83).⁶⁴ It is out of order for a member to move that the debate be adjourned to a specific date.⁶⁵ A member whose motion for the adjournment of a debate is negatived cannot speak later in that debate (S.O. 84).⁶⁶

A member may not conclude his speech with a motion, "That the debate be now adjourned", nor may a member who has spoken move the closure.⁶⁷ To meet the convenience of the House a member who has not finished his speech may, with the leave of the House, move that the debate be adjourned.⁶⁸

11.3 Inaugural and Valedictory Speeches

A member's inaugural speech (formerly first speech or maiden speech) is the first speech a member makes in the Legislative Assembly regardless of prior parliamentary experience in another House of Parliament.⁶⁹ It is the general custom that other members extend a greater measure of courtesy to a member making an inaugural speech and refrain from making interjections and other interruptions regardless of whether matters of a controversial nature are raised in that speech.⁷⁰ Standing order 63 provides for the business before the House to be interrupted at a specified time⁷¹ (but not so as to interrupt a member speaking) to permit members to make their inaugural speeches without a question being before the House.⁷² The interrupted business is resumed on completion of the speech or speeches. The standing order also provides for the time limit on inaugural speeches to be 15 minutes with a 5 minute extension.

Retiring members often make valedictory speeches in their final days of Parliament. Such speeches provide the member with an opportunity to reflect on their time as a member of Parliament. As with inaugural speeches it is customary that members

⁶⁴ Previous standing order amended to allow the member in charge or member speaking at interruption to ask that the resumption of the debate be set down, VP 25/09/1996, p. 431.

⁶⁵ The Speaker ruled the motion "That this debate be now adjourned until 26 June 2001" out of order as it was contrary to the standing orders (resumption of debate set down by member having carriage). The Speaker reminded the House that Acting Speaker Bruxner had ruled that a member may move only that the debate be adjourned, not that it be adjourned to a certain date. See PD 04/03/1970, p. 3851 PD 19/06/2001, p. 14777.

⁶⁶ See PD 28/10/1993, p. 4736 where the Speaker ruled that a member was precluded from speaking again after his motion to adjourn the debate was negatived.

⁶⁷ VP 31/05/1887, p. 223; PD 26/08/1969, p. 533.

⁶⁸ A member speaking to an amendment to a motion that a bill be now read a second time, by leave, moved that debate be now adjourned, VP 29/06/2000, p. 679; member speaking to the question that a bill be now read a second time, by leave, moved that debate be now adjourned in order to facilitate the address by the First Secretary of the National Assembly of Wales, VP 07/06/2000, p. 559; member in reply sought to adjourn the debate, but instead the putting of the question was deferred to a later hour, PD 02/05/1996, p. 741; member speaking adjourned the debate by leave, VP 16/04/1997, p. 783, VP 06/12/1995, p. 481.

⁶⁹ PD 10/09/1991, p. 931.

⁷⁰ See comments made by Speaker Murray in relation to an inaugural speech that was made during a motion in relation to a breach of privilege and a number of points of order were taken throughout the speech. PD 01/06/1995, p. 562.

⁷¹ See, for example, VP 23/06/1999, p. 159.

⁷² Prior to the adoption of the current standing orders in 2006 a sessional order in the same terms had been in place since 1999. See VP 12/05/1999, p. 48; VP 07/09/1999, p. 22; VP 26/02/2002, p. 16; VP 29/04/2003, p. 30.

listen to valedictory speeches in silence. However, in practice, other members often heckle retiring members in the spirit of fun, particularly long serving members. On occasion, the House has passed resolutions to enable members to make valedictory speeches when no other business is before the House,⁷³ and at times such speeches are made as part of a contribution to a debate on Christmas felicitations.⁷⁴

11.4 Personal explanation

Standing order 62 states that, with the leave of the Speaker, a member may make a personal explanation to the House. A member is not entitled to seek the call to make an explanation if there is a question before the Chair.

Rulings of the Speaker provide that a personal explanation allows a member to briefly⁷⁵ explain any matter which reflects upon the honour, character or integrity of that member, or reflects upon the member in a personal way⁷⁶ including the refuting of accusations made against them by other members in the House.⁷⁷ Personal explanations can also be made by members if, on reflection of a speech they have made in the House, the member concludes that it was not correct in its details. Speaker Murray stated in 2001 that the standing orders allow for members to make a personal explanation to draw the attention of the House to their interpretation of events.⁷⁸ Ministers are also entitled to make a personal explanation on ministerial statements they have made.⁷⁹

However, a personal explanation does not extend to allowing members to make explanations about remarks made by other members during debate which do not conform with their ideas, in the course of continuing the debate.⁸⁰ Furthermore, Speakers have ruled that no new matter may be introduced under the guise of a “personal explanation”, which must be confined to explaining the precise misrepresentation.⁸¹ In practice, a member should confine remarks to “This is what was said; these are the facts.”

They should not be used to explain matters on behalf of another person,⁸² nor to make a personal attack on another member.⁸³ Personal explanations do not extend to simply refuting an inaccurate statement made about them⁸⁴ or to refute a Minister’s answer to a question during Question Time.⁸⁵ In addition, debating the

⁷³ For example, at the end of the 52nd Parliament there were a number of retiring members who wished to make valedictory speeches in the House. The House suspended standing and sessional orders to allow members to make valedictory speeches of up to 15 minutes with a 5 minute extension available when no other business was before the House. VP 20/11/2002, p. 631.

⁷⁴ PD 22/11/2002, p. 7543.

⁷⁵ PD 07/11/2001, p. 18207; Point of order upheld that a member’s personal explanation was too long, PD 06/03/2001, p. 12237.

⁷⁶ PD 28/05/1997, p. 9427; PD 22/10/1996, p. 5142; PD 29/10/1996, p. 5433.

⁷⁷ See PD 02/12/1994, p. 6236, where leave was granted for a member to make a personal explanation concerning an accusation made in a statutory declaration that was tabled the previous day.

⁷⁸ PD 28/02/2001, pp. 12126-7.

⁷⁹ PD 29/05/2001, p. 13821.

⁸⁰ See ruling of Speaker Burke, PD 18/06/1931, p. 3406.

⁸¹ PD 09/09/1952, p. 489; and PD 20/11/1952, p. 2513.

⁸² A member during a personal explanation stated that a breach of practice of the House had occurred in that the Premier had made misleading comments against a person who was not a member of the House. The Speaker ruled that members could not make a personal explanation on behalf of a stranger. PD 27/03/2001, p. 12609.

⁸³ PD 28/02/2001, pp. 12126-7.

⁸⁴ PD 16/11/1994, p. 5144.

⁸⁵ PD 13/05/1993, pp. 2071 and 2079 where Speaker Rozzoli noted that the House’s time would be consumed with members seeking to make personal explanations if members sought to refute everything said by a Minister in reply to a question because the response was considered to be inaccurate or not in accordance with another member’s truth.

matter the subject of the explanation, and alluding to any debate of the same session (unless the bill or question is then under discussion) is prohibited.

Normally, personal explanations are made following Question Time. However, a member is not confined to that time, as long as there is no question before the Chair. The Speaker has not allowed a personal explanation on a matter of privilege under consideration by the Chair.⁸⁶ The Speaker may withdraw leave if the member strays too far from the rules regarding a personal explanation.⁸⁷

11.5 Speech in explanation

An explanation under standing order 65 is different to a personal explanation. Under this procedure a member who has already spoken to a question may explain some material part of their speech which has been misunderstood or misinterpreted.⁸⁸

In making an explanation, the member cannot interrupt another member already speaking,⁸⁹ introduce new material into the debate, debate the matter or invoke this right after the question before the Chair has been determined. Leave is not required to make a speech in explanation unless a different question is before the Chair, in which case the leave of the House is required.

11.6 Closure

The closure is the name given to the motion moved during debate "That the question be now put" and it is referred to, colloquially, as "the gag". Originally, there were no means by which debate upon any question could be terminated while any member was seeking the call. The motion, without notice, "That...(the member speaking)...be not further heard" was available, and the Chair had the authority to direct a member to discontinue his speech for continued irrelevance and for tedious repetition.⁹⁰ However, flagrant "stonewalling" was, for the most part, suffered in comparative silence.

In 1887, Sir Henry Parkes, seeking means to combat any obstruction of discussion, was instrumental in the introduction of the "closure" which since 1894 has appeared in the standing orders.⁹¹ In 1922⁹² and again in 1923,⁹³ the Standing Orders and Procedure Committee was given a reference by the House to report on, amongst other things, a new standing order which provided that the application of the closure should be subject to the consent of the Speaker or other occupants of the Chair. The Clerk provided the Speaker, who was the chair of the committee, with advice noting that to adopt such a rule would be contrary to a previous decision of the House where it had refused to give the Speaker the power to decide the "urgency" of a

⁸⁶ PD 18/06/1998, p. 5428.

⁸⁷ PD 12/10/1995, p. 1720.

⁸⁸ PD 07/12/1995, p. 4413.

⁸⁹ An unusual occurrence happened when a member took a point of order, claiming to have been misunderstood during another member's speech on a bill. The member was told he could not interrupt another member speaking but that he would be given the call at the conclusion of the member's statement. PD 05/06/2001, p. 14366.

⁹⁰ A member has the right to require the Chair to put the question that the member "be further heard" after they have been called to cease speaking. Standing order 60.

⁹¹ See VP 12/05/1887, p. 187 where the House referred the matter to the Standing Orders and Procedure Committee for consideration and report; VP 17/05/1887, p. 192 where the report of the Committee was tabled; VP 20/05/1887, pp. 209-12 where the House agreed to and adopted the new standing order; VP 31/05/1887, p. 217 where the Governor's approval was reported.

⁹² See VP 24/08/1922, p. 87.

⁹³ VP 20/09/1923, p. 70.

matter regarding motions for adjournment. Consequently, the committee did not recommend that the proposed standing order be adopted by the House.⁹⁴

The closure of debate is dealt with by standing orders 86 to 89. The object of moving the closure is to bring debate on a question to an end by directing the putting of the substantive motion under consideration by the House. It forces the House to reach a decision on a question.

Briefly the rules governing the moving of the closure are:

- It cannot be moved before 10.30 a.m. on days where the House sits earlier.
- It may be moved without notice, whether another member is speaking or not.
- It may not be moved on a motion to suspend the standing orders.⁹⁵
- There are restrictions on when it can be moved in certain debates.⁹⁶
- The mover of the original motion,⁹⁷ or a member who has already spoken may not move the closure (this is akin to seeking the call to speak a second time to a question).⁹⁸
- No debate nor amendment is allowed on the question.⁹⁹
- If there is a division on the closure question it must be carried by at least 30 members.
- If the motion for the closure is agreed to, the mover of the original motion is permitted a reply of up to 30 minutes (or a lesser time if specified for the debate). The closure cannot be moved during the reply.
- The carrying of the closure only affects the last question submitted to the House. For example if the question before the House is "that the words proposed to be omitted stand", the carrying of the closure would not affect debate on the next questions which could be "that the words proposed to be added be so added" and "that the clause as amended stand part of the bill". Closure could be moved on each of these separate questions. In the House if the closure is agreed to for debate on an amendment, debate on the original motion may be continued and the closure would need to be moved again to end debate.
- The Chair may not accept the motion when the business under consideration is covered by a "guillotine" notice.¹⁰⁰ This is considered below.

11.7 Closure—allocation of time for debate (guillotine)

A closure may also be applied by application of a guillotine notice (S.O. 90). This standing order, which was first adopted in 1925,¹⁰¹ does not require the Government to allocate time for discussion despite its title. When a notice is given indicating the

⁹⁴ See PD 07/11/1923, p. 2158 where the Committee reported on proposed new standing orders and amendments to existing ones.

⁹⁵ Standing order 365(6) provides that the closure does not apply to any motion to suspend standing and sessional orders. On one occasion a member moved the closure on a motion to suspend standing and sessional orders and after being advised that it was out of order the member moved that the Member speaking be not further heard, which was agreed to. PD 25/05/2000, pp. 5680-1. For another example see PD 20/11/1996, p. 6312.

⁹⁶ S.O. 111 provides that the closure cannot be moved on a motion of no confidence in the government until at least 8 Members have spoken to the original question before the House. S.O. 112, S.O. 113, S.O. 114, and S.O. 115 in relation to motions of no confidence in a Minister or the Speaker and motion of censure of a member or the Speaker provide that the closure cannot be moved until at least 4 members have spoken on the original question before the House.

⁹⁷ See ruling of Speaker Ellis, PD 26/08/1969, p. 533.

⁹⁸ VP 31/05/1887, p. 223 and PD 26/08/1969, p. 533.

⁹⁹ See ruling of Speaker Ellis, PD 01/09/1970, p. 5418.

¹⁰⁰ PD 04/11/1959, p. 1718.

¹⁰¹ See VP 01/09/1925, pp. 29-31 where the House agreed to and adopted the new standing order and VP 03/09/1925, p. 35 where the Governor's approval was reported to the House.

item (or items) of business, the stages to be completed and the times before which the closure may not be applied, the requirements of the standing orders have been fulfilled. There is no compulsion for the item specified to be “called on” before the time stated in the notice.

The intention of the guillotine is to ensure that proceedings are completed in a timely fashion. On one occasion it was argued by the then Leader of the House that a guillotine notice was “merely a contingent matter, should discussions develop, for the tidy and expeditious disposal of this bill and other matters.” It was also put that the nature of a guillotine notice is non-threatening.¹⁰²

A guillotine notice is characterised as follows:

- Notice of intention to apply a guillotine may only be given by the Premier or a Minister acting on the Premier’s behalf.
- Notice of the intention to apply a guillotine to certain stages or clauses of a bill must be given verbally to the House at a previous sitting and written notice must be given to the Speaker and party leaders, and the notice is published in the business paper.
- At the time specified in the notice or at some later time at the same sitting, any member may move the closure which, if carried, is deemed to be an instruction to the Chair to put to the vote every question necessary to give effect to the terms of the notice up to the time specified in the notice.
- The effect of the closure being moved is to permit only those amendments proposed by a Minister not yet put, to be put by the Chair, provided printed copies have been circulated at least two hours before the specified time in the notice.¹⁰³ The amendments are put as one question. If there have been no Minister’s amendments circulated, the Speaker puts to the vote the question on the agreement in principle and, if passed the Speaker will declare the bill to have passed the House.¹⁰⁴
- If not moved on the sitting day, the notice lapses.

11.8 Speakers’ statements

On occasion, the Speaker will inform the House of a variety of matters, both procedural and administrative, by way of a statement to the House. Such matters have included:

- advising the House that the proceedings are to be filmed;¹⁰⁵
- advising the House that a notice in relation to the Legislative Assembly programme would appear in a Sydney metropolitan newspaper;¹⁰⁶
- allowing the use of notebook/laptop computers in the Chamber;¹⁰⁷
- retirement or death of members¹⁰⁸ and members of staff of the House,¹⁰⁹
- noting the anniversaries of members who had served for a number of

¹⁰² PD 11/12/1991, p. 6545.

¹⁰³ On one occasion a motion was agreed to that for purposes of a guillotine notice on a bill that amendments circulated by a private member be deemed to be the amendments proposed by a Minister. VP 12/12/1991, p. 489.

¹⁰⁴ See VP 25/9/96, p. 429 – where an amendment was made to the guillotine procedure to permit the conclusion of a bill if no amendments were circulated.

¹⁰⁵ VP 07/05/1992, p. 321; VP 09/11/1993, p. 493.

¹⁰⁶ VP 30/05/1995, p. 75.

¹⁰⁷ VP 12/10/1995, p. 282.

¹⁰⁸ VP 29/10/1998, p. 1017; VP 19/02/1985, p. 209.

¹⁰⁹ VP 17/04/1996, p. 39; VP 11/12/2002, p. 665.

- years;¹¹⁰
- advising the House of the launch of the Parliament's Internet site;¹¹¹
- advising the House of arrangements to hear addresses from overseas dignitaries;¹¹²
- reminding the House of the rules in relation to the framing of questions without notice;¹¹³
- reminding the House as to the purpose of private members' statements;¹¹⁴
- advising the House of the new paging system and the issue of new pagers to members;¹¹⁵
- advising members that a condolence book had been placed in the foyer of Parliament House for Her Majesty Queen Elizabeth the Queen Mother;¹¹⁶
- informing the House that an East Timor flag, provided by the Australian East Timor Association, had been placed in the Speaker's Square to commemorate the independence of East Timor and invited all members to sign it and advising that the signed flag would be donated to the library of the University of East Timor;¹¹⁷ and
- inviting members to add their signatures to a letter addressed to the President of Nigeria concerning women's human rights.¹¹⁸

11.9 Time limit for speeches

There are different time limits for speeches in various debates. These are all set out in standing order 85.

In some debates, provision is made for a member to request an extension of time. The procedure is that a member makes the request (after the three minute warning bell sounds) and the Speaker puts the question:

"That the member's time be extended".

No amendment or debate is allowed on this question. There is no provision for extensions of speaking time when a bill or matter is being considered in detail (former committee of the whole). However the House has moved a motion in committee, by leave, to extend a member's speaking time¹¹⁹ and for a member to conclude their speech.¹²⁰

There is no provision for restoring to a member time lost due to interruptions such as points of order,¹²¹ procedural motions or quorum calls,¹²² although the Speaker has restored time lost to a member on occasion or by agreement.¹²³ The Speaker has

¹¹⁰ PD 01/05/1996, p. 659; PD 18/11/1997, pp. 1945-6; VP 07/04/1998, p. 473.

¹¹¹ VP 29/10/1996, p. 520.

¹¹² VP 20/11/1996, p. 625.

¹¹³ VP 02/06/1998, p. 668.

¹¹⁴ PD 04/09/2001, pp. 161297 and 16330.

¹¹⁵ VP 16/10/2001, p. 1493.

¹¹⁶ VP 09/04/2002, p. 133.

¹¹⁷ VP 28/05/2002, p. 215.

¹¹⁸ VP 26/09/2002, p. 488.

¹¹⁹ PD 31/05/1995, p. 466.

¹²⁰ PD 09/06/2000, p. 7026.

¹²¹ On one occasion standing and sessional orders were suspended to permit the mover of a motion to speak for a full 10 minutes irrespective of points of order taken during his contribution. VP 20/06/2000, pp. 601-2.

¹²² On one occasion a member's speaking time was reset at five minutes due to a quorum being called just after the member had started to speak. PD 30/11/2000, p. 11411.

¹²³ PD 08/04/1997, p. 7215; PD 17/04/1996, p. 165; PD 26/10/1999, p. 1950

also on occasion directed the Clerk to reset the clock used to time members' contribution to debate.¹²⁴

11.10 Granting of leave

Leave is a means by which the House gives permission for something to occur which would not otherwise be allowable. Leave can only be granted if no member dissents. A request for leave cannot be debated (S.O. 96). Members must be given the opportunity to refuse to grant leave if leave is sought for a particular proceeding, e.g. to table documents outside the time specified in the routine of business.

The Chair must intervene to ask:

"Is leave granted?"

Leave is refused by any member calling "no" in response to this question. The Chair may also be required to intervene when a member attempts to do something which cannot proceed without leave being granted.

Under the standing orders the leave of the House is required for a member, other than a Minister, to be able to move for the suspension of standing orders (S.O. 365).

Under the standing orders, the leave of the Speaker must be sought for members to be able to incorporate material into *Hansard* (S.O. 271), make a personal explanation (S.O. 62), and to speak from their seat in the Chamber (S.O. 56).

11.11 Questions of order

Specific matters on which the Chair may need to intervene are as follows:

11.11.1 Points of order

Under standing order 93, a member has the right at any time to raise a point of order relating to a breach of the standing orders or the practice of the House. The point of order must be clearly stated to the Chair who may make a decision immediately or hear argument on the point of order and then make a ruling. Until the point is determined all other proceedings are suspended. It has been ruled that the question "That a member be not further heard" cannot be moved on a point of order.¹²⁵ However, the closure has been moved and no objection taken.¹²⁶ Furthermore, the practice of the House has been for members to remain in the Chamber when a point of order against them is being considered.¹²⁷

It is unclear whether it is competent to take a point of order upon a point of order. In 1975 Speaker Cameron ruled that it was not in order to raise a point of order on a point of order.¹²⁸ However, in the early 1900s the Chair permitted a point of order to be taken on a point of order.¹²⁹ Accordingly, points of order raised about a point of order need to be considered on a case by case basis. Such cases are rare because the circumstances for such are very limited.

¹²⁴ PD 15/11/2001, p. 18742.

¹²⁵ PD 14/11/1929, p. 1349.

¹²⁶ PD 23/05/2000, p. 5526.

¹²⁷ PD 17/02/1992, p. 1094 where the Deputy Leader of the Opposition was ordered to return to the Chamber after a point of order was taken against him.

¹²⁸ PD 17/09/1975, p. 1168.

¹²⁹ See for example, VP 22/10/1903, p. 312.

Only one point of order may be raised and considered at one time, and unless taken immediately on an alleged breach, will not be considered later by the Chair. Any member is entitled to interrupt another member speaking to call attention to a point. However, this does not apply when the Chair is speaking or “on his feet” as it is grossly disorderly to interrupt the Chair.¹³⁰

A common error into which members are apt to fall is to take a point of order upon the substance of a speech, claiming that because of inaccuracies or misleading statements the member speaking is out of order.¹³¹ These alleged offences do not necessarily constitute breaches of the standing orders. The contents of a speech are matters of opinion¹³² which any member is entitled to put to the House, and it is not the function of the Chair to decide the accuracy of any statements made. Should another member disagree with the views expressed, the member may subsequently refute the argument with other argument. That is the essence of debate.

It is an abuse of the forms of the House to take spurious points of order.¹³³ In fact the Speaker has on occasions refused to take points of order due to members’ behaviour¹³⁴ and has warned members that they will not be given the call if they continue to take points of order which do not comply with the standing orders.¹³⁵

Furthermore, Speakers’ rulings have indicated that if an attack is made on another member either in answering a question or during debate it is up to the member who was attacked to raise a point of order that the attack on him or her should be by substantive motion.¹³⁶

11.11.2 Interjections

Technically, interjections are regarded as disorderly (standing order 61 sets out the only circumstances in which a member may speak) but, since relevant questions or interjections frequently elucidate the speaker’s remarks, discretion is generally exercised by the Chair. If, however, a member who is speaking objects to interjections, the Chair must protect that member. Interjections are not recorded in *Hansard* unless responded to by the member who has the call.

11.11.3 Offensive words, reflections on members and unparliamentary language

According to *May*, “good temper and moderation are the characteristics of Parliamentary language.”¹³⁷ As long ago as 1887, a Speaker ruled that it was out of order to use language which could be held to be offensive to the feelings of another member. A standing order adopted in 1964 stated that “No member shall use offensive or unbecoming words in reference to any member of either House.” This standing order had, on occasions, been responsible for objections either frivolous or as a result of mishearing, and yet others engendered by the heat of the moment – most of them time-wasting and unnecessary. From the 1960s, this has resulted in a modification of the ruling. Nowadays the Chair “must be satisfied, surely, that the

¹³⁰ See standing orders 50 and 51.

¹³¹ PD 27/02/1929, p. 3244.

¹³² PD 18/11/1943, p. 875; PD 29/10/2003, p. 4432.

¹³³ PD 14/10/1998, p. 8308; PD 16/11/1995, p. 3407.

¹³⁴ PD 15/10/1998, p. 8453; PD 11/11/1998, p. 9714.

¹³⁵ PD 08/03/2001, p. 12481; PD 29/05/2001, p. 13826.

¹³⁶ PD 29/04/1992, pp. 3011 and 3014.

¹³⁷ *May*, p. 440.

words complained of must be fairly and reasonably capable of giving offence,¹³⁸ and will not, in any event, tolerate endless requests for withdrawals of allegedly offensive remarks to the stage of absurdity.¹³⁹

"Unparliamentary language" may be regarded as encompassing "offensive words" under the standing orders and also include words which, while not strictly excluded by the standing orders, are inappropriate for a Parliament.

Unparliamentary language must be considered in context; words which may be regarded as objectionable under some circumstances may be unexceptionable under other conditions.

Objections that any particular words or language used are offensive must be taken immediately.¹⁴⁰ It has been ruled that an objection will be entertained only from a member who was the butt of the remarks.¹⁴¹ However, this is not always the case.¹⁴²

The expressions "offensive words" and "unparliamentary language" generally refer to the same thing. A useful distinction is that "offensive words" offend against standing orders 72 and 74.

Standing order 72 prohibits members from using offensive words against the sovereign or the Governor or against either House or its members, a member of the judiciary or a statute unless moving for its repeal. In relation to reflections on judges it is important to note that members are able to criticise members of the judiciary but may only do so by way of a specific and distinct substantive motion naming the judge and stating the charge or complaint against him or her. Speaker Ellis, in a considered ruling in relation to criticisms of the judiciary under the standing orders argued that the member moving the motion must produce evidence to support the charges, and that the motion "must be confined to the charge or complaint and must not relate to other matters as well." Speaker Ellis went on to argue that "...It is not sufficient merely to impute improper motives or to make reflections, insinuations, or innuendos in a general way. The motion must be specific."¹⁴³

This rule is based upon the philosophy of the separation of powers in that "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 upon their decisions."¹⁴⁴

In a further ruling Speaker Ellis advised the House "...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."¹⁴⁵

¹³⁸ See comments of Speaker Ellis, PD 16/02/1966, pp. 3321-2.

¹³⁹ See comments of Deputy Speaker Fowles, PD 19/11/1963, p. 6373.

¹⁴⁰ PD 14/03/1963, p. 3410.

¹⁴¹ PD 17/11/1965, p. 2084.

¹⁴² See PD 10/03/2004, p. 7080 where a parliamentary secretary objected to remarks made about another member in the Chamber.

¹⁴³ See ruling of Speaker Ellis, PD 29/03/1966, p. 4707.

¹⁴⁴ *Ibid.*

¹⁴⁵ PD 31/03/1966, pp. 4936-8.

When a question of order relates to offensive words or unparliamentary language, the Chair may intervene under standing order 74. The rule to be followed was succinctly stated in a ruling of Speaker Ellis in 1966 and still applies. Speaker Ellis stated:

*If language is used which is capable of giving offence to a member and he takes objection to it, the Chair will order that it be withdrawn and, if it is a serious case, the Chair will direct an apology. But, of course, the rule also is that the member using the language may explain it away and make it clear that he did not intend to offend.*¹⁴⁶

The essential element in such cases is that the words personally offend an individual member. As such the test is not whether the words are offensive per se but whether they related directly to an individual member who immediately objected to them. As such, practice of the House has been that, if a member takes exception to a remark on the ground that it is personally offensive, the Chair will insist on its withdrawal, unless the complaint is clearly unjustified. Members may be requested to apologise if the words are extremely distasteful,¹⁴⁷ and if a member is ordered by the Chair to withdraw certain words and refuses to do so, the member may, under standing order 250(3), be named (see section 23.2 of Part One).

Furthermore, standing order 73 forbids “imputations of improper motives and personal reflections on members” unless they are made by substantive motions framed for the purpose.

11.11.4 Relevance and tedious repetition

The question of relevance arises in respect of:

- (a) relevance of debate, including answers to questions (S.O. 59, 67, 70, 76, 129, 214, 245(1)), and
- (b) relevance of a proposed amendment (S.O. 160).

Each question of relevance must be decided on its own merits.

In relation to the relevancy of answers given by Ministers to questions, it is accepted practice that when Ministers answer questions in the House they may reply in any manner they deem appropriate¹⁴⁸ including replying to any interjections.¹⁴⁹

When a bill is being considered in detail, discussion must be confined to the clause or clauses being considered. However, reference is usually permitted to other clauses or the explanatory notes attached to the bill when this is necessary to elucidate meaning.¹⁵⁰

The Chair is able to direct a member who is transgressing the rules regarding relevance to cease speaking. When this occurs, it is open to that member, or any other member, to ask the Chair to put the question “That the member be further heard”. However, if a member has been ordered to discontinue a speech under

¹⁴⁶ PD 15/11/1966, p. 2438.

¹⁴⁷ PD 22/11/1995, p. 3793.

¹⁴⁸ Speakers' rulings have indicated that they cannot direct Ministers in how they answer a question. See for example PD 29/10/2003, p. 4365; PD 20/10/1988, pp. 2472-3.

¹⁴⁹ PD 03/03/1993, p. 248.

¹⁵⁰ For example, see PD 21/04/1994, p. 1662.

standing order 59 due to persistent irrelevance or tedious repetition the member may not be heard upon the same question.¹⁵¹

With regard to the relevance of amendments to questions before the House, the Speaker has ruled that proposed amendments that are not relevant to the question before the House are out of order. For example, the Speaker ruled out of order a proposed amendment to a motion to suspend standing orders to enable the introduction and debate on the appropriation bill and cognate bills. The amendment proposed that the motion be amended to permit the House to immediately debate the Government's handling of an alleged incident at Cecil Hills High School and to allow for the taking of members' questions on each day when the House sits on a Friday.¹⁵² Similarly, the Speaker ruled out of order a proposed amendment to a motion to suspend standing orders to allow the introduction and progress up to and including the Minister's second reading speech of a bill to amend the Crimes Act as the amendment proposed to add the words "and the Premier be required to advise the House why he is not taking any action to ensure the courts actually impose the heavier sentences he talks about and why he has failed to honour his promise to increase police numbers in New South Wales."¹⁵³

In relation to tedious repetition, it should be noted that whilst tedious repetition has not been precisely defined, Speakers' rulings indicate it means repeating something within the same debate rather than repeating comments that had previously been made in other debates.¹⁵⁴

11.11.5 Respect for the Chair

Standing order 50 provides that, whenever the Speaker rises, members must be seated and be silent. This allows the Speaker to be heard and for all members to be aware that the Chair is intervening to restore order.

It is also provided in the standing orders that when the Speaker is putting a question members shall be silent and not leave or cross the Chamber (S.O. 51).¹⁵⁵

The Chair has ordered a member cease speaking and resume his seat for canvassing his ruling.¹⁵⁶ The Chair has also asked the Serjeant-at-Arms to remove members from the Chamber when they continue to flout the Chair's ruling.¹⁵⁷

11.11.6 Reflections upon private citizens

Invariably occasions arise when, for some reason or another, a member feels compelled to criticise or perhaps castigate private citizens. It is contrary to the unwritten law of Parliament to make charges reflecting upon persons who have no right of reply to those charges, unless the member has strong proof of the assertions or the member feels it is within the public interest to do so.¹⁵⁸ The Chair has ruled

¹⁵¹ PD 17/07/1902, p. 1280; and PD 25/10/1917, p. 2128.

¹⁵² PD 29/05/2001, p. 13835. See also PD 29/03/2006, p. 21709 where an amendment moved to a motion of censure was ruled out of order for being outside the scope of the motion as it was not an amendment but proposed a different motion of censure.

¹⁵³ PD 04/09/2001, p. 16318.

¹⁵⁴ See ruling of Speaker Ellis, PD 10/09/1968, p. 748 and ruling of Speaker Cameron, PD 27/11/1975, p. 3342.

¹⁵⁵ Former standing orders provided for members to make obeisance (bow slightly) to the Chair when passing in front of the Chair on entering or leaving the Chamber as an indication of respect. This is no longer required under the standing orders adopted in 2006.

¹⁵⁶ PD 19/05/1998, p. 4778.

¹⁵⁷ PD 08/11/2001, pp. 18294-7.

¹⁵⁸ PD 02/12/1964, p. 2481.

that in what might appear to be a bad case of a member using the privilege of freedom of speech, it will seek to restrain any such attack, but it is not within the province of the Speaker to prevent free speech in the House.¹⁵⁹ In fact, on one occasion a request by a member for the withdrawal of remarks about a visitor has been refused.¹⁶⁰

The Chair has warned members against using their freedom of speech in Parliament to reflect adversely on private citizens or public officials who do not enjoy the same privilege.¹⁶¹ A member, although not amenable to civil or criminal courts for his or her utterances in a proceeding in the House is answerable to the House itself, which may adjudge the member “guilty of conduct unworthy of a member of Parliament” and in extreme cases, expel the member from the service of the House under standing order 254. On one occasion the House has censured the Leader of the Opposition for permitting the abuse of parliamentary privilege by opposition members in raising unsubstantiated allegations against an individual.¹⁶² For further information on the House’s control over what a member says under parliamentary privilege see section 3.7 of Part Two.

During the 51st Parliament, a procedure called “a citizen’s right of reply” was adopted which enables, at the discretion of the House, a person or corporation adversely named in the House to seek to have a reply incorporated into *Hansard* (see Chapter 29 of Part One).

11.11.7 Decorum

Standing orders and tradition contain a number of rules for behaviour in the Chamber, including that members:

- Must sit and be silent when the Speaker rises (S.O. 50).¹⁶³
- Shall be silent and not leave or cross the Chamber while the Speaker is putting a question (S.O. 51).
- Shall not converse while other members are speaking (S.O. 52). Members should also not hold conversations with people seated in the public gallery.¹⁶⁴
- Shall not pass between the Chair and the Table or between the Chair and the member speaking (S.O. 53).
- Shall normally be seated (S.O. 54).
- Wishing to speak will rise and seek the call from the Speaker (S.O. 55).
- Shall speak standing except by leave of the Speaker (S.O. 56).
- Should not use props or things that cannot be recorded in *Hansard* when speaking.¹⁶⁵ Although visual material such as maps may be placed on the

¹⁵⁹ PD 16/10/1969, p. 1706.

¹⁶⁰ PD 13/10/1965, p. 1295.

¹⁶¹ PD 02/05/1989, p. 7148; PD 06/05/1997, p. 8076; PD 09/11/1999, p. 2433.

¹⁶² VP 09/09/1999, pp. 51-3; PD 09/09/1999, pp. 256-74.

¹⁶³ Members failing to abide by this standing order may be given a more serious admonition than that which usually accompanies the usual call to order. For instance, the Speaker placed a member on three calls to order when the member flouted the authority of the Chair. That same day the Speaker placed a Minister on three calls to order for the same reason and warned the House that the Chair would not tolerate the habit developing in the House of members interjecting when the Chair was standing. PD 21/04/1994, pp. 1629-30.

¹⁶⁴ For example, a member was called to order for holding a conversation with people in the public gallery. The Speaker stated that it was a longstanding tradition that there be no communication between members of the House and persons in the gallery, and warned people in the gallery that they should desist from further communication. PD 21/05/1993, p. 2625.

¹⁶⁵ See the ruling given by Speaker Rozzoli that a member who wishes to table material in *Hansard* must first approach the Speaker to ascertain whether the material is capable of being reproduced in *Hansard*. PD 21/05/1993, p. 2609. See also PD 30/05/2000, p. 6074.

Table for perusal by other members.¹⁶⁶ In fact, the Speaker has ruled that maps or similar graphic material should be displayed in the Speaker's Square at least 1 day prior to the debate and should thereafter be displayed on each sitting day on which the bill or other matter is listed for debate.¹⁶⁷

- Should not leave the Chamber immediately upon finishing a speech.
- Should be appropriately attired.¹⁶⁸
- Should not read newspapers or material not related to the business of the House.¹⁶⁹
- Members have also been warned against raising spurious points of order, moving around the Chamber, conversing loudly, using unparliamentary language and displaying poor conduct.¹⁷⁰
- Should not bring into the Chamber for use mobile phones¹⁷¹ or laptop computers.¹⁷² The latter prohibition was however relaxed under Speaker Murray, who in 1995 commented that it had been demonstrated to him that using a laptop computer in the Chamber did not interfere with the orderly conduct of proceedings and, on that basis, allowed members to use notebook/laptop computers in the Chamber¹⁷³ and in 1998 Speaker Murray suspended the sitting to allow a technician from the Parliamentary Technology Services section to assist a member with his laptop computer.¹⁷⁴

In addition, a Minister, or parliamentary secretary in accordance with standing order 366, should always be at the Table,¹⁷⁵ and the front benches are reserved for Ministers and Shadow Ministers during Question Time.¹⁷⁶

11.12 Sub judice convention

The term "sub judice" simply means under judicial consideration.

The general rule is that matters still under adjudication by the courts should not be brought forward in debate in such a way as to prejudice court proceedings, but the public interest may be held to prevail over the sub judice doctrine. The rule only applies to debate and as such notices of motions cannot be ruled out of order on the basis of the sub judice convention until they are moved.¹⁷⁷

The application of what has been termed "the sub judice rule" in the New South Wales Legislative Assembly is not subject to a statute, standing order or set rule. Accordingly, reference must be made to New South Wales' precedents.

¹⁶⁶ PD 20/05/2003, p. 708.

¹⁶⁷ VP 01/05/1992, p. 290.

¹⁶⁸ On objection being taken, the Speaker noted that Speakers have generally ignored the wearing of badges, PD 28/04/1998, p. 3979.

¹⁶⁹ PD 30/08/1967, p. 919; PD 10/03/1970, p. 3983; PD 19/03/1970, p. 4655; PD 13/05/2004, p. 9049; and PD 08/06/2005, p. 16676.

¹⁷⁰ VP 16/11/1995, p. 394.

¹⁷¹ PD 18/06/2002, p. 3278.

¹⁷² PD 10/12/1991, p. 6226.

¹⁷³ PD 12/10/1995, pp. 1709-10.

¹⁷⁴ PD 01/04/1998, p. 3600.

¹⁷⁵ PD 27/05/1998, p. 5305, although see also PD 24/06/1998, p. 6498.

¹⁷⁶ PD 15/10/1997, p. 849.

¹⁷⁷ See PD 17/09/1992, pp. 6006-8 where the Speaker noted that as he understood the application of the rule he had no power to rule a notice of motion out of order as the rule applies to the debate that ensues after a motion is moved.

Whether discussion on a matter purportedly sub judice is allowed is at the discretion of the Chair. The Chair's decision is, of course, subject to the will of the House exercised through a motion of dissent.

It is often difficult for the Chair to decide whether to invoke the sub judice convention because the facts are not always well enough known or may be in dispute. Under these circumstances, the reasonable course is to make a request of members not to refer to matters which, in their knowledge, might prejudice any judicial proceedings. For instance, a member was allowed to continue canvassing a number of matters related to a case listed in a local court after the Speaker warned him about traversing evidentiary matters.¹⁷⁸

In situations where it is unclear whether a member intends to speak to a matter that is considered to be sub judice in a generalised way or by delving into the evidentiary matters before the court the Speaker has permitted the debate to commence with the proviso that he would ask the member to desist if it appeared that the sub judice rule was being breached.¹⁷⁹ It is also usual to permit debate when a writ for defamation has been issued (colloquially referred to as a 'stop writ'), or before a civil case has been set down for trial or otherwise brought before a court.

A stricter interpretation of the convention is applied in respect of criminal cases before the courts.

The origin of the sub judice rule (or convention) is detailed in a report of the House of Commons Select Committee on Procedure entitled "Matters Sub Judice", as: "the desire of Parliament to prevent comment and debate from exerting an influence on juries and prejudicing the positions of parties and witnesses in court proceedings." The Select Committee recognised a difference between the sub judice convention and contempt of court: "sub judice is imposed voluntarily by Parliament itself and is exercised subject to the discretion of the Chair with the object of forestalling prejudice of proceedings in the courts. Courts protect themselves from prejudicial comment outside Parliament by the exercise post hoc of the powers to punish contempts".¹⁸⁰

In summary, the important matters the Chair has to take into consideration in applying the rule are that:

- the Parliament has a right to legislate on any matter within its jurisdiction – therefore the restriction of debate on matters on the basis that they are sub judice is based on the House voluntarily restricting itself in debate in order not to influence the outcome of a court's deliberation and to protect the interests of litigants or other parties before the courts.¹⁸¹
- the convention is much stricter in relation to criminal matters (taking effect the moment a charge is made) than in civil cases (where the filing of the relevant documents is the trigger).
- the onus falls upon the Chair and the Chair alone to adjudge whether a matter is sub judice. In order to make this assessment the Chair must be

¹⁷⁸ PD 10/04/1992, p. 2662; See also PD 13/10/1994, p. 3996.

¹⁷⁹ PD 06/05/1992, pp. 3658-60 and p. 3666.

¹⁸⁰ 4th Report HC 298 (1971-2) pp. vii-viii; see also *May*, pp. 436-7.

¹⁸¹ See comments by Speaker Ellis in relation to what principles should guide the Chair in determining whether a matter is sub judice. PD 07/11/1972, p. 2286.

apprised of the specific matter before the Court and the Chair must be able to hear enough of the member's contribution to decide whether the member should be allowed to proceed.

The Chair must also take a realistic attitude in such matters by not automatically excluding discussion in the House on matters of public interest which are already being freely ventilated in the media. Speaker Ellis referred to the following quotation from the judgment of Sir Frederick Jordan, Chief Justice of the NSW Supreme Court in *Ex parte Bread Manufacturers Ltd; re Truth and Sportsman Ltd and another* (1937) SR (NSW) 249-50 which relates to the public interest question:

*...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 and 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.*¹⁸²

Mr R.P. Meagher QC makes the following comment on the modern sub judice rule:

*It is of critical importance to appreciate that the rule is limited in its operation. It does not apply unless the necessity of its operation has become quite clear ... It has to be applied prudently, and is not applied strictly. It applies, when it does, only to prevent discussion of the precise issue before the House, not to prevent general discussion of collateral or related matters.*¹⁸³

Rulings that have been given by Speakers of the Legislative Assembly include:

- (1) On 25 August 1965, Speaker Ellis gave a considered ruling on the application of the sub judice rule following a request for advice on the matter from the Leader of the Opposition. He stated that it didn't necessarily follow that because a matter was before a court that every aspect of it must be sub judice arguing that the press are able to deal with some aspects of court cases without in any way offending the court or embarrassing it or transgressing any rule of law or propriety and that the Parliament must be able to do the same. Speaker Ellis went on to note that the great difficulty was to determine what is, in fact, before the court and that a flexible approach should be taken to the sub judice issue 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.

As such, Speaker Ellis ruled that he would 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 of a point of order taken by a member, that another 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. Speaker Ellis did note that this was a liberal interpretation of the rule and warned members that should they display a tendency to take unwarranted liberty that it may be necessary for the Chair to

¹⁸² See comments by Speaker Ellis, PD 05/11/1970, pp. 7404-5.

¹⁸³ Meagher, QC, "The Parliamentary sub-judice rule in New South Wales", in *Justice: Journal of the International Commission of Jurists – Australian Section*, No. 7, November 1978, pp. 33-9.

revert to a strict application of the sub judice rule.¹⁸⁴

- (2) On 13 September 1973, Speaker Ellis stated in relation to Royal Commissions that the *Royal Commissions Act 1923* (NSW) was substantially the equivalent to the English *Tribunals of Enquiry (Evidence) Act 1921* to which the sub judice rule has been said to apply in that country – therefore the rule applied to proceedings of Royal Commissions.¹⁸⁵
- (3) On 31 May 1988, Speaker Rozzoli said in such matters "the Chair always receives and gives maximum weight to the advice of the Attorney General on whether a matter is sub judice", and when the subject matter relates to matters of criminality the rule is applied more strictly than it might otherwise be.¹⁸⁶
- (4) On 25 August 1988, Speaker Rozzoli reinforced past rulings that it is the action of lodging an appeal that brings about the initial ground upon which the sub judice rule can apply.¹⁸⁷
- (5) On 19 April 1989, Speaker Rozzoli ruled, during debate on motion on the legal system, that a member should be allowed latitude in addressing the question of whether a matter involved sufficient public interest to weigh the scales in favour of not invoking the rule. He said that the rule is closely aligned but not identical to the question of what constitutes contempt of court. "...the Parliament should not embark upon any course which is likely to prevent a litigant in a court of law from having his case tried free from all manner of prejudice, balanced by the competing freedom of the Parliament to debate matters which are deemed to be of extreme public interest."

The Speaker went on to quote a former Commonwealth Attorney General, Dr H.V. Evatt who said on 17 April 1947 that:

What is said in Parliament is absolutely privileged by law. What is said in the courts of justice is absolutely privileged by law. We have those two great instruments of government, the legislative power exerted by one, and the judicial power exerted by another. As the years have gone by, the Parliament, having an absolute privilege and not being bound to the rules of contempt of court, or even the laws of defamation, both of which are applicable to comment outside the Parliament, has taken the view which I believe has been carried out in cases like the Jerger case.

That is to say the Parliament does not ask – "Is there a proceeding pending at the moment?", but rather "In all the circumstances, should a debate on a particular matter be permitted at this particular moment?"

Speaker Rozzoli further said that:

- The Chair must weigh the matters presented in terms of the rights of litigants against the public interest.
- A member should not deal with the merits of matters currently before the courts in relation to which, to any specific degree, the courts must be the proper tribunal.

¹⁸⁴ PD 25/08/1965, pp. 75-6.

¹⁸⁵ PD 13/09/1973, pp. 858-9.

¹⁸⁶ PD 31/05/1988, p. 828.

¹⁸⁷ PD 25/08/1988, pp. 619-20.

- The debate should address matters of broad public interest, to draw attention to wrongs and to determine matters of policy which may address those wrongs.
 - The House should not try matters which should properly come before the courts.
 - The subject of the debate must not be substantially associated with the proceedings before the court.¹⁸⁸
- (6) On 3 April 1990, Speaker Rozzoli invoked the sub judice rule after a point of order was taken by the then Attorney General that a matter sought to be debated, was before the courts. Mr Speaker said that, in determining whether public interest outweighed all other interests, public interest was not necessarily to be equated with widespread interest. The interests of litigants must also be taken into account and in this regard he said – “A longstanding arm of the sub judice rule provides that if a matter of a criminal nature proceeds before a jury ... under almost every circumstance the sub judice rule should be invoked.”

He said that in this particular case, the matter was a criminal one and was before the courts in the sense that a proceeding had been commenced and under those circumstances the rule should be invoked. He also said that he felt that it would be difficult to divorce from any debate the matters that may go to, and be brought into, evidence in a hearing of the matter.¹⁸⁹

- (7) On 10 April 1992, Speaker Rozzoli directed a member who had raised a matter during the Grievance Debate which was listed in a local court to not raise matters that would prejudice the outcome of such proceedings. The member replied that he wished to canvass a number of matters which showed a deficiency in the current legislation as it affected the Building Disputes Tribunal. The Speaker allowed the member to continue but warned him about traversing evidentiary matters.¹⁹⁰
- (8) On 6 May 1992, Speaker Rozzoli noted that the application of the sub judice rule is not restricted to matters of a criminal nature being heard before a jury but can apply to civil matters, depending upon the circumstances that arise such as whether there is any likelihood of prejudice occurring to the litigants in the matters when a point of order was raised about a proposed matter of public importance concerning an action in the Land and Environment Court. The Speaker stated that before the debate commenced it was very difficult to know whether the member intends to speak to the matter in a generalised way or to delve into the evidentiary matters before the court and he ruled that it was best to allow the debate to commence.¹⁹¹
- (9) On 17 September 1992, Speaker Rozzoli noted that under the sub judice rule he had no power to rule a notice of motion out of order as the rule applied to the debate that ensued after a motion had been moved. As such any applications of the sub judice rule must occur when debate on the motion takes place.¹⁹²

¹⁸⁸ PD 19/04/1989, pp. 6849-51.

¹⁸⁹ PD 03/04/1990, pp. 1489-90.

¹⁹⁰ PD 10/04/1992, p. 2662.

¹⁹¹ PD 06/05/1992, pp. 305-6.

¹⁹² PD 17/09/1992, pp. 6006-8.

- (10) On 11 October 1995, Speaker Murray explained that the sub judice rule is only applied if it is determined by the Chair that reference to specific matters may influence the judgment of a court. He therefore did not apply the rule in that case where the coroner had already taken all evidence.¹⁹³
- (11) On 16 May 1996, Speaker Murray did not apply the sub judice rule as he considered that as the matter was before a judge rather than a jury, it was unlikely that the House's debate would influence the judge's determination.¹⁹⁴
- (12) On 8 April 1997, Speaker Murray confined debate to one paragraph of a motion as he had received advice from the Attorney General that the matter was currently before the courts.¹⁹⁵
- (13) On 16 April 1997, Speaker Murray read a letter from the Attorney General advising that civil proceedings had been commenced on a subject and that to debate that matter would infringe the sub judice rule. The Speaker advised that he was obliged to read the advice but it was for the House to make its own decisions. No ruling of sub judice was made.¹⁹⁶
- (14) On 19 November 1997, the Acting Speaker directed a member to not continue a line of debate relating to a murder case.¹⁹⁷
- (15) On 14 October 1998, the Deputy Speaker ruled that there was no point of order in mentioning the fact that people had been arrested.¹⁹⁸
- (16) On 22 October 1998, Speaker Murray allowed a question after being advised that charges had been laid related to the matter as the question was general rather than specific in nature but advised the Minister to be brief and avoid particular cases.¹⁹⁹
- (17) On 22 October 1998, Speaker Murray noted that it is traditional for the Chair to accept the advice of a Minister on whether the subject matter of a question is sub judice.²⁰⁰
- (18) On 29 June 1999, Speaker Murray ruled out of order a general business notice of motion (general notice) submitted by a member because it infringed the sub judice convention.²⁰¹
- (19) On 22 September 1999, Speaker Murray allowed a question without notice on the understanding that the answer was not likely to influence any decision to be made by a judge or a jury but the Speaker asked the Minister to take care about

¹⁹³ PD 11/10/1995, p. 1589.

¹⁹⁴ PD 16/05/1996, p. 1153.

¹⁹⁵ VP 08/04/1997, p. 737.

¹⁹⁶ PD 16/04/1997, p. 7631.

¹⁹⁷ PD 19/11/1997, p. 2139.

¹⁹⁸ PD 14/10/1998, p. 8372.

¹⁹⁹ PD 22/10/1998, p. 8902.

²⁰⁰ PD 22/10/98, pp. 8898-9.

²⁰¹ VP 29/06/1999, p. 179.

the way in which he answered the question.²⁰²

On all occasions before the sub judice rule is invoked the individual circumstance of the matter must be considered by the Chair.

11.12.1 Matters before the Independent Commission Against Corruption (ICAC)

Matters before the Independent Commission Against Corruption do not fall within the sub judice rule. However, the House has at times observed the practice of refraining from asking questions about matters before the ICAC. In 1996, when the ICAC was conducting an inquiry involving three members of the New South Wales Parliament, the Speaker noted that the precedent was that matters before the ICAC were not the subject of questions in the House. However, the Speaker found it difficult to rule a question out of order on the basis that the matter is before a court. He stated:

*the difficulty facing the Chair was that ICAC is not a properly constituted court of law in the sense that it does not fall into the category of court proceedings on which Speakers in the past have ruled. The matter in question was not before a jury. At the moment the ICAC has under consideration matters relating to three members of this Parliament and public proceedings are being conducted. Often a short-term initiative has no long-term value to the House and to that extent I am at this stage not attempting to give a ruling on the matter but merely to express a point of view. The difficulty that the Chair faces is that we have gone down a certain path in relation to the current public proceedings and it is very difficult to withdraw from that path. However, at an appropriate time I will rule on the admissibility of such questions and it will be up to the House at that stage to determine whether to abide by that ruling.*²⁰³

The matter was also considered by Speaker Aquilina in 2005 following the asking of questions in the House, which touched on evidence given at the ICAC. He noted:

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. Parliamentary privilege is expressly recognised 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.*²⁰⁴

²⁰² PD 22/09/1999, pp. 1066 and 1068.

²⁰³ PD 21/05/1996, p. 1227.

²⁰⁴ PD 22/03/2005, p. 14704.