

Chapter 12

The Speaker

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My comments will reflect my experience and observations as Speaker of the Legislative Assembly in Victoria from 1988 to 1992 – the last two years of John Cain’s premiership and Joan Kirner’s two years as premier. I have built on that period in subsequent research and writing at Monash University.

Background

The context for my comments is the conference theme of “Parliaments: Constitutional roles and realities”. They will take a broad, expansive view of constitution – spelt with a small “c”. “[T]he law and custom of Parliament are regarded as one of the many sources of [their] ‘unwritten’ constitution”, according to New Zealand authorities.¹ I argue that that being so, Speakers have uniquely important constitutional roles. I will focus on Australia but our history inevitably leads to some references to other jurisdictions, especially Westminster. I will concentrate on three themes:

- (1) what the public thinks Speakers do, or should do;
- (2) the responsibilities of Speakers; and
- (3) reform proposals.

The office of Speaker in Australia derives from Westminster so let me begin the description of the office by that great English authority, Erskine May. Writing before responsible government in any Australian colony, he stated that:

The Speaker of the House of Commons is the representative of the House itself in its powers, proceedings and dignity. The Speaker's functions fall into two main categories. On the one hand the Speaker is the spokesperson or representative of the House in its relations with the Crown, the House of Lords and other authorities and persons outside Parliament. On the other hand, they preside over the debates of the House of Commons and enforce the observance of all rules for preserving order in its proceedings.²

More recently, one of Westminster’s finest Speakers, Betty Boothroyd (1992 to 2000), is reported to have described three roles of the Chair in the Commons: The bringing of order and coherence to the proceedings of the House through the selection of speakers and amendments; the administration of the House (as chair of the House of Commons Commission); and representing Parliament abroad (and she has stressed elsewhere the extent of her activities in representing parliament to a wide range of audiences within the United Kingdom as well).³

These descriptions are compatible with contemporary practice in Australian parliaments, although there are differences which I will touch upon. For example, Speakers at Westminster leave their political parties upon taking the Chair, their constituency is not contested by major parties, the House re-elects them to office even after a change of governing party and, when they leave office, they resign from the House. However, there is one subtlety to notice: after a change

of government, the reappointed Speaker sometimes resigns after a number of months, providing the opportunity for the new government to support one of its own for the vacancy. None of these are features of Australian practice. For example, many former Speakers have remained in Parliament, as indeed did I for a full parliamentary term.

Each of these roles described fulfils a constitutional function that contributes to the structure and operation of the Parliament – the supreme democratic institution in the system of government.

What the public sees

In Australia, the Speaker is elected by the House by secret ballot and is generally a member of the party holding a majority in the House, although there have been exceptions such as Queensland Legislative Assembly Speaker Wellington; former Speaker of the Legislative Assembly of New South Wales, Richard Torbay; and former Speaker of the House of Representatives, Peter Slipper.

What the public sees are attempts by Speakers to bring a sort of order. Too often the public, at least those who watch the TV news, see the House in uproar, with the Speaker trying to impose order whilst members on both sides try to drown out the sound of the other, in support of their own.

That is not to say that the public blame the Speaker for the disorder. The opprobrium is usually directed to “child-like behaviour” of MPs in general.

Question Time – questions without notice – is overwhelmingly the time of most disorder. It is not well-known that questions without notice is a peculiarly Australian invention. Most other parliaments allow only questions of which ministers have had prior notice, although supplementary questions can be similar in effect to questions without notice. In Australia, the disorder reflects the high emotion inherent in putting the government under intense scrutiny, and in Government counter-attacks. Salisbury found evidence of increasing levels of misbehaviour in his study of several Australian parliaments.⁴

When a Speaker is criticised for disorder in the House, it is generally claimed that he or she is showing partisan bias in their treatment of members, especially Opposition members. The Speaker is in a difficult position. As Boothroyd put it: “When you have committed all your adult life to the ideals and policies of one party, impartiality is a quality you have to work at”.⁵ Nonetheless, she was widely respected for the impartiality that she displayed.

The Australian experience is mixed. Speakers have not made the break with party seen at Westminster.

In recent times, few Speakers have been openly accused of bias. In an interesting study, Teo found strong differences between the performances of three Speakers of the Legislative Assembly in Victoria at times of minority government. There was minimal criticism of Speaker Andrianopoulos, strong criticism of Speaker Ken Smith and only moderate criticism of Speaker Fyffe.⁶

Federally, Speakers in the 1980s and 1990s were less sensitive to the desirability of the appearance and reality of impartiality than were most in more recent times. Speaker Bronwyn Bishop was widely accused of bias in her rulings excluding members from the House for misbehaviour, but her long-serving predecessor, but two, Speaker Jenkins (Jnr), was well-respected and his rulings rarely questioned. Whilst Speaker Slipper was embroiled in other controversies, his chairmanship was also well-regarded.

Governments of both complexions have misused their power over the office. Speaker Jenkins should not have been inveigled into resigning and followed by the installation of Speaker Slipper. Speaker Bishop's previous reputation for vigorous partisanship should have precluded her from consideration for the office.

It is useful to observe that once any member decides he or she wants to be named in order to make a political point, there is little the Speaker can do to stop it without diminishing his or her authority. In those circumstances, the Speaker can be portrayed as biased against the member, invariably an Opposition member.

With the benefit of hindsight and an outside perspective, I do acknowledge that the perception of my impartiality would have been enhanced had I not attended parliamentary party meetings and that had been known. My practice was then the norm. Non-attendance is now increasingly common practice in Australia.

It is in that context that I find a constitutional principle to be relevant – the principle of public trust. To me, this mirrors the public expectation that members of Parliament should act impartially in the public interest, with dignity, decorum and respect.

Although the public does not put this in terms of legal principle, the sentiment is consistent with members' status as public officers. That Members of Parliament are public officers was confirmed in a High Court decision in the 1920s, as reported by French, CJ.⁷ As public officers, members hold a public trust, whereby they have an entrusted responsibility. As Brennan put it:

It has long been established legal principle that a member of Parliament holds 'a fiduciary relation towards the public' and 'undertakes and has imposed upon him a public duty and a public trust'.⁸

Brennan stated further:

a public power is not exercised lawfully if it is exercised not for a public purpose for which the power was conferred but in order to promote the electoral advantage of a political party.⁹

This has general application to all members. All members of Parliament are public officers with an inescapable duty to act in the public interest above personal, party or other private interests. It is especially relevant to the Speaker as his office is at the heart of the system of government.

The Speaker has an even greater public trust as his or her office involves advocating and defending the institution's function of acting in the public interest, whether in legislating or scrutiny, that is, holding government to account.

It is widely accepted that the members of any organisation have a responsibility to defend the integrity of their organisation. Correspondingly, all members should defend the Parliament. I argue, however, that a Speaker is elected to serve the interests of the House, is seen by the public as having some responsibility for its performance, and is thereby accorded a leading role and hence a higher duty than other members in Westminster parliaments.

If that is what the public sees, what do Speakers actually do?

Speaker's responsibilities

The Speaker literally occupies the Chair and applies the Standing Orders (that is, rules of procedure). The Standing Orders are formally adopted by resolution of the House on recommendation for new or amended provisions. These are recommendations of the Standing Orders Committee (or equivalent), chaired by the Speaker; they generally have all-party support. It is common, however, for governments to use their majority in any House to introduce Sessional Orders which suspend the operation of specific provisions in Standing Orders and substitute provisions which facilitate government business – especially passage of legislation, such as by limiting opportunities for Opposition members to move motions. Sessional Orders are imposed by government majorities and do not have input from the Standing Orders Committee or the Speaker.

The Speaker interprets the Standing Orders and Sessional Orders (if any) in Rulings on individual points of order. Speakers' Rulings build like common law to form a body of precedent and practice that guides the incumbent Speaker and members. Rulings, however, are not necessarily consistent with each other and can appear contradictory.

The Speaker is not constantly in the Chair when the House is in session. Speakers invariably take the Chair for Question Time but, beyond that, often vacate it for a Deputy Speaker or one of the Temporary Chairs who are selected and appointed by the Speaker. In the Commonwealth Parliament there is also the Federation Chamber which provides “an additional forum for the second reading and consideration in detail stages of bills and debate of committee reports and papers presented to the House”. It is “chaired by the Deputy Speaker”.¹⁰ The House of Commons in the United Kingdom has adapted this Australian model.

The Speaker also vacates the Chair for the committee stage during which a bill is considered in fine detail.

In addition to occupying the Chair, the Speaker has responsibilities akin to a minister of a small government department. The extent of these responsibilities varies between jurisdictions and over time. Some Speakers have responsibility for electorate office staff or members, buildings, equipment and consumables (for example, Victoria) whilst others are limited to the parliamentary building and the staff of their House. The Bligh Government in Queensland caused an uproar when it handed control and supervision over all things affecting the Legislative Assembly of Queensland to a committee consisting of ministers and Opposition executives. This severely undermined the separation of powers and the authority of the Speaker which are elsewhere seen as important to the Parliament's independence from the Executive Government – essential to Parliament's scrutiny of the Executive Government.

The greatest weakness of this aspect of the Speaker's role goes to the heart of the Parliament's independence from Executive control – its budget. The Speaker has responsibility for the Parliament's budget. That budget determines its capacity to fulfil its constitutional roles of scrutinising the Executive Government, conducting committee meetings and inquiries, gathering information and evidence, deliberating on legislation, and meeting constituents.

There is considerable variation in parliamentary budgetary processes throughout the Westminster world. Commonly, Parliament's budget allocation is simply part of the general Appropriation Act – in other words, the Government budget. In Victoria, since my initiative in 1992, there is a separate Parliamentary Appropriation Act. This is important symbolically, but in

practice still leaves the Presiding Officers as supplicants pleading their case to the ministers who frame the Government budget. A better model is in the United Kingdom, where a parliamentary commission chaired by the Speaker prepares estimates that are tabled in the House of Commons and those estimates are appropriated.

A further recognition of the status and role of the Speaker is to receive diplomatic representatives including newly-appointed ambassadors, high commissioners, consuls-general, and visiting delegations of MPs and other representatives of foreign countries. Speakers also lead delegations but these are relatively few and far between.

Reform proposals

There are a number of reforms affecting the constitutional roles of the Speaker that are desirable. I begin with perceptions of the independence of the Speaker. Emerging Australian best practice should be adopted – that is, Speakers should suspend active membership of any political party from the moment of their election to the office, with the sole exception of within their home electorates. The number of members in Australian houses of Parliament, however, precludes the Westminster practice of quarantining the Speaker’s seat from electoral contest: as we have seen in the House of Representatives in 2010 and 2016, that one seat could make the difference between Government and Opposition, which is far less likely with the United Kingdom’s 650 members.

Secondly, the parliamentary budget process should be a blend of the UK and Victorian models – controlled by the Speaker, with estimates prepared by a bipartisan committee with the benefit of advice from the Government, tabled in the House and incorporated in a separate appropriation bill introduced by the Speaker.

Thirdly, Question Time. The Speaker applies the rules and sets the tone. Some Houses, such as the Legislative Assembly in Victoria, have restructured Question Time in genuine attempts to improve its function of providing answers to questions on government policies and management. Only non-government MPs can ask questions in the time for general questions. Questions about constituency matters have a separate time allocation.

It is not apparent that Question Time in the House of Representatives has enjoyed significant reform.

One of my last acts as Speaker in 1992 was, however, to issue a set of reforms that I reproduce in the Appendix. There were 16 points, among the most important of which were that:

1. questions must ask for information on matters for which ministers have ministerial responsibility;
2. where a question makes an allegation, the member asking is responsible for the accuracy of the facts; and
3. ministers’ answers must actually answer the question asked.

Unfortunately, those guidelines were not adopted by my successor.

A more pressing issue than reform of the theatre of Question Time is the ethical conduct of members of Parliament. The conduct of members is central to the House fulfilling its constitutional roles and maintaining its legitimacy in the eyes of the citizens. The Speaker has, or should have, the central role in ensuring that a parliamentary integrity regime is in place to enhance and sustain high ethical standards by individual members and to maintain the House’s reputation for integrity.

The Commonwealth Parliamentary Association commissioned me to lead the development of *Recommended Benchmarks for Codes of Conduct for Members of Parliament*, published in 2015.¹¹

Whilst Australian parliaments may not have displayed the egregious corruption seen in some other jurisdictions, the handling of ethics in our parliaments is weak compared with nations with which we like to compare ourselves. For example, few are aware that neither the House of Representatives nor the Senate has a Code of Conduct or Code of Ethics for their members. Our counterparts in the United Kingdom and Canada have codes with provisions for rigorous enforcement. What is more, there is a supportive culture amongst their members and the provisions are used, so much so that members have told me that their parliament is better for it.

Integrity systems extend beyond parliament to include, for example, corruption control bodies, but parliaments are the supreme democratic institutions in each jurisdiction and Speakers are elected to lead them. Speakers have the opportunity to take a leading role as advocates of reform to enhance the integrity system, given the stature of Speakers as public officers with elevated responsibilities.

Key features which could and should be built into new or updated codes are included in the *Benchmarks*, for example:

- fostering a culture of ethical conduct;
- independent investigation of allegations of unethical or improper conduct to determine the facts; and
- rigorous application of appropriate sanctions where independent investigation confirms unethical or improper conduct.

Conclusion

In concluding, I reiterate that the Speaker has a little appreciated central role in the operation of our constitutional arrangements. That role deserves greater recognition. Speakers are public officers exercising one of our most important public trusts. They should be encouraged and supported to use their constitutional responsibilities to the maximum possible extent, including budgetary independence, reform of key accountability procedures such as Question Time, the establishment of effective codes of conduct and leading enhanced recognition of the status of members of Parliament as public officers.

Endnotes

1. Bagnall, David, “Revising the Standing Orders”, *Australian Parliamentary Review*, vol. 31, (1), 8-25, at p. 11.
2. Thomas Erskine May, *A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament*, London, Charles Knight, 1844, 154.
3. Seaward, P. (ed.), *Speakers and the Speakership: Presiding Officers and the Management of Business from the Middle Ages to the Twenty-first Century*, England, Wiley-Blackwell, 2010.
4. Salisbury, C. (2011), “Mr Speaker, I withdraw . . . standards of (mis)behaviour in the Queensland,” Western Australian and Commonwealth parliaments compared via online Hansard, *Australasian Parliamentary Review*, 26(1), 166-177.

5. Boothroyd, E. B., "The Role of the Speaker in the 20th Century", in P. Seaward (ed.), *Speakers and the Speakership: Presiding Officers and the Management of Business from the Middle Ages to the Twenty-first Century*, England, Wiley-Blackwell, 2010, 136.
6. Teo, S., *The effectiveness of the role of the Speaker in Victorian minority governments*, Parliamentary Internship, Melbourne, 2014.
7. French, R., *Public Office and Public Trust*, Seventh Annual St Thomas More Forum Lecture, Canberra, 2011.
8. Brennan, Sir Gerald, Presentation of Accountability Round Table Integrity Awards. <http://www.accountabilityrt.org/integrity-awards/sir-gerard-brennan-presentation-of-accountability-round-table-integrity-awards-dec-2013/>, 1-2.
9. Ibid., 2.
10. Parliament of Australia. (2016). About the House of Representatives. [http://www.aph.gov.au/About Parliament/House of Representatives/About the House of Representatives](http://www.aph.gov.au/About%20Parliament/House%20of%20Representatives/About%20the%20House%20of%20Representatives)
11. Commonwealth Parliamentary Association (CPA). (2015). *Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament* Retrieved from [http://www.cpahq.org/cpahq/Main/Document Library/Codes of Conduct/Codes of Conduct.aspx](http://www.cpahq.org/cpahq/Main/Document%20Library/Codes%20of%20Conduct/Codes%20of%20Conduct.aspx)

Appendix

Legislative Assembly, Victoria

GUIDELINES ON THE CONDUCT OF QUESTION TIME

It is important that question time is conducted in a manner which both ensures that it fulfils its intended purpose and is consistent with the status and proper dignity of Parliament.

The following are the guidelines based on Standing Orders, Speakers' rulings and May¹ which apply to the conduct of question time:

- a member or a Minister must not read a question or an answer. Such questions and answers may be ruled out of order by the Chair;
- questions and answers must relate to government administration or policy and should be directed to the Minister most directly responsible or answering on behalf of such Minister in another place;
- questions to the Premier may relate to matters within the Premier's portfolio responsibilities and to general matters of government policy and administration, but questions concerning detail affecting another portfolio should be directed to the responsible Minister;
- questions should not seek an expression of opinion, seek a legal opinion or ask whether statements reported in the media are accurate or correct;
- questions should not seek a solution to a hypothetical proposition, be trivial, vague or meaningless;
- questions should not contain epithets or rhetorical, controversial, ironical, unbecoming or offensive expressions, or expressions of opinion, argument, inferences or imputations;
- questions should not raise matters which are sub judice or anticipate debate on an Order of the Day;
- where a question relates to an allegation, assertion, claim, imputation or similar matter, the member is responsible for the accuracy of the facts. Where the facts are of sufficient moment the member may be required to provide prima facie proof to the Speaker before the question is admitted;
- questions cannot reflect on the character or conduct of members of either House and certain other persons in official or public positions which are defined in May. Attention is also drawn to the provisions of the Australian House of Representatives Standing Orders which restrict questions critical of the character or conduct of other persons to questions on notice;
- where a question seeks information which is too lengthy to be dealt with in an answer to a question or otherwise invites a Ministerial statement, the Chair may disallow it and suggest that the Minister to whom it is directed consider making a Ministerial statement on the matter following question time. It should be noted that such action is not constrained by the practice of issuing copies of Ministerial statements, which is a courtesy only, or by the relatively recent practice of Ministerial statements being followed by debate on the question that the Ministerial statement be noted;
- questions which breach the guidelines are out of order and there is no right to immediately rephrase or re-ask questions which have been disallowed;
- answers must comply with the same rules and practices as apply to the asking of questions;
- answers must be directly responsive, relevant, succinct, limited to the subject matter of the question, may provide statements of policy or the intentions of the government, including information on examinations of policy options and other actions which the Minister has had undertaken but must not debate the matter. (Answers to questions should be limited to 2 minutes usually and an absolute maximum of 5 minutes actual speaking time);
- an answer may be refused on the grounds of public policy, for example, that answering may

jeopardise criminal investigations or for some other particular reason may be against the public interest;

- that the information is not available to the Minister, in which case it may be requested that it be placed on notice;
- that the Minister intends to make a Ministerial statement on the subject matter in the near future.

The conduct and effectiveness of question time is in the hands of members. It will assist if:

- personal conversation is limited as it is discourteous and adds to the background sound which creates difficulty in clearly hearing questions and answers;
- a member or a Minister speaking pauses whenever audible conversation, interjection or other disorderly behaviour occurs;
- a member or a Minister who is unable to control his/her disorderly conduct leaves the Chamber for the remainder of question time rather than risk being named. The Chair may exercise its absolute discretion concerning the call by not giving the call to a member or a Minister whose conduct has been disorderly, including interjections.

A member or Minister who has been consistently warned as a result of disorderly conduct in question time may be named without further warning as a result of further disorderly conduct during any part of proceedings on that day or a future day during the current sittings period.

1. C. J. Boulton (ed.), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, London, Butterworths.