

5 May 2007

Executive Officer
Public Accounts and Estimates Committee
Parliament House
Spring Street
East Melbourne Vic 3002

The attached submission is forwarded for the consideration of the PAEC Inquiry into Strengthening Government and Parliamentary Accountability in Victoria. I was the Speaker in the NSW Legislative Assembly from 1988 to 1995. I am currently the National President of the Australasian Study of Parliament Group, an Honorary Research Associate with the Department of Government - Sydney University, Honorary Research Fellow in the Department of management - Monash University and author of 'Gavel to Gavel, An insider's view of parliament' published by UNSW Press last year. I have recently been engaged by the Centre for Democratic Institutions to facilitate the induction program for newly elected members of the PNG Parliament in August.

I trust the Committee will find my submission of interest.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kevin Rozzoli', written in a cursive style.

The Hon. Kevin Rozzoli

Submission presenting a case for a continuing independent speakership

A fair and impartial parliament is fundamental to the proper functioning of any democratic government. It is highly desirable for a speaker to be impartial and free from party influence in the conduct of House debates and in the administration of parliamentary services.

This important element of impartiality, and therefore of democracy itself, has been severely compromised in the Australian parliamentary culture. The attitude of successive governments to the selection of speakers and the role they expect of their speaker has been significantly partisan. The phrase “their speaker” is used because in most cases the speaker is the government’s choice rather than the parliament’s.

Members have a range of inter-locking responsibilities in the performance of their duties. They have a responsibility to the parliament itself and to the public image of parliament as a gathering place where members individually and collectively carry the responsibility of governing the lives of others.

The public have a right to expect that members will conduct themselves in a manner worthy of their office and worthy of the powers and responsibilities vested in them. The importance of personal dignity, self-esteem, self-discipline and professional integrity as guiding influences cannot be underestimated. Members in many ways, reflect the society that elects them. Community leadership brings with it an expectation of conduct which sets a good example.

A significant body of public opinion believes the interests of parliamentary democracy and the lifting of behavioural standards would be well served by an independent and continuing speakership. A speaker who is divorced from the pressures of political party affiliation is able to conduct the affairs of parliament, without fear or favour. The speaker is free from specific directions from the government or attacks from the opposition regarding bias or unfairness. This view was supported in Queensland by the Report of a Commission of Inquiry pursuant to Orders in Council which delivered four reports between 1987 and 1989. The third report at para 3.1.1 states:

In order to be an effective forum, Parliament must have sufficient resources to enable it properly to research topics and evaluate Government proposals. Parliament can easily be prevented from properly performing its role by being denied time and resources. Any Government may use its dominance in the Parliament and its control of public resources to stifle and neuter effective criticism by the Opposition. This can be prevented by mechanisms such as an impartial Speaker. Because of its necessary numerical strength, the Government in a parliamentary democracy is obviously able to change and ignore the rules. In these circumstances the authority and neutrality of the 'referee' is of critical importance. The Speaker cannot afford to adopt a partisan role, either voluntarily, or in order to retain the confidence and support of the Government party. If the Speaker enters the arena, there is a risk that Parliament will not be able to make the Government accountable.

The Australian media is generally supportive of a strong and independent speakership as a means of returning greater accountability to parliament. The reluctance of governments therefore to even consider the concept is a matter of concern.

As with the essential ingredients of justice a speaker must not only appear to be fair and unbiased but be fair and unbiased. Those who have in the past looked for a model of a continuing independent speakership have quite understandably turned to the United Kingdom. This has limited value given its unique history and circumstance. Apart from identifying a desirable end model it is not possible to replicate the particular conventions and procedures which guide the election and conduct of the office of speaker in the Commons in other jurisdictions.

The House of Commons has a unique approach to the selection and continuity of its speaker in office until retirement. This approach and the traditional practices of the Commons which preserve and respect the speaker's independent role are discussed by Phillip Laundry in his authoritative book, *The Office of Speaker* (London: Cassell & Co, 1964).

Although the United Kingdom elements may not be easily absorbed into other parliaments, we can none the less examine them to identify the elements which create the dynamics of their speakership. The challenge for other jurisdictions is to elect a speaker by a fair and appropriate method which reflects the opinion of most members, and which also safeguards the essential elements of the role from partisan interference. The speakership is not a political prize. The independence and continuity of the position should be upheld at all times.

In any such process safeguards which must be included are those which require a substantial fixed majority of the parliament to support any subsequent procedural change in the manner of a speaker's election or dismissal. The insistence on such a majority vote would protect the parliament from its own baser instincts, making it virtually impossible for a government through weight of numbers to affect a change which would subvert the procedure.

It is argued by those steeped in the traditions of Westminster, that a motion of censure against a speaker even if defeated on party lines would leave a speaker in an untenable position. Having lost the confidence of the opposition can a speaker comfortably remain in office? While the answer in Canada in 1956 was no, in Australia the speaker need only retain the confidence of the government to survive. It all depends on the culture of the particular parliament. In parliaments dominated by rigid party discipline the finer points of Westminster morality carry little weight. In his book *Acts of Parliament* (Melbourne: Melbourne University Press, 1988) pp 115–116, noted Australian journalist Gavin Souter, describes the Australian ethos thus:

Less was heard also about political neutrality in the Chair. The office became virtually a party appointment, as it was already in most State parliaments. Without consulting the Opposition, Deakin lent his support to an undistinguished but loyal personal follower, ... Henceforth a change of Government would usually mean a change in Speakership, and although future Speakers would be to various degrees impartial in their conduct of proceedings it would also be normal for them to attend meetings of the parties to which they owed their election. They would sometimes vote in committee, and sometimes even participate in debate.

The 1989 Report of the Western Australian Parliamentary Standards Committee into the feasibility of a Code of Conduct for members of parliament made the following comment at para 9.3.1:

There is no doubt that the record of governments in supporting a Speaker from their own ranks who tries to administer the rules impartially is not good in Australia. For a number of reasons few government MPs are ever suspended, at least in lower Houses, and when, for example, Speaker Cope in the Australian House of Representatives in 1975 tried to discipline a Minister of Crown from the party of which he was a member he was openly repudiated

by the Prime Minister and other Members from the governing party. Finding remedies for this situation which are both appropriate and realistic in the Australian context is not an easy matter. However, the members of this Committee are convinced that it is absolutely fundamental to achieving the objectives of this Report that everything possible must be done to encourage the development of an ethos amongst Members that Parliament is superior to party considerations and that respect for the office of the Presiding Officer is the starting point for respect for Parliament itself. It would be unrealistic to suppose that the situation could develop in Australia where Presiding Officers enjoy the relative immunity from opposition in their own constituencies which is the case in Britain. There are also considerable practical obstacles to overcoming the assumption that the Speakership is a prize to be awarded by the party which wins power. Nevertheless the Committee would urge that the Parliament as a whole give very serious consideration to the process by which the practice could be developed that an incumbent Speaker (or President) who is returned at a general election, may retain the post notwithstanding which party is in power.

To break this 'spoils of victory' philosophy and yet give a new parliament the power to confirm its choice of speaker, it is necessary to provide a buffer against the politically-inspired vote. Having said that, there is little doubt that if a speaker were subjected to a motion of censure that was validly based or was advised by party leaders that the chair no longer possessed the confidence of their members, it would be difficult even within the framework of a continuing speakership for that speaker to remain in office. I am sure in such an instance a speaker would be counselled to resign and would so act. I would argue that with the majorities I suggest for the carriage of a censure motion such an approach would return to its proper status as the final action available.

Procedures relating to the election of speaker should be embodied in the Constitution and amended only by referendum.

In addition to the identifiable ground-swell opinion in the media and elsewhere for such an initiative, there is a general recognition amongst parliamentarians, in their less partisan moments, that there is substance and value in an independent continuing speakership. There can be little doubt that if such an initiative was taken by the parliament it would be welcomed by the community and reflect favourably on any government, opposition or independent supporting the action. Gone would be the

expectation and perception of governments that the speaker was there to protect them or the accusation by oppositions of persistent bias.

In the process set out below I attempt to codify the concept of a speaker withdrawing to a notional constituency, serving in the capacity of a member-at-large. Such a concept would allow a speaker to make representations on matters of broad interest and concern, but on a non-partisan basis and beyond the influence of party politics. A speaker would need to exercise care and judgment to avoid being drawn into politically sensitive issues, but this should not pose a particular problem. Any speaker demonstrating a partisan bias would undoubtedly draw criticism from both sides of the House and place at risk that speaker's continuing tenure. It is the traditional United Kingdom view that a speaker should continue to represent an individual constituency; however such a view is predicated on conventions which cannot reasonably be replicated elsewhere. If there are disadvantages in what I suggest I believe they are well outweighed by the advantages, particularly those going to the status of the parliamentary institution. It is worthwhile to again refer to Laundry who discusses the implications of the speaker not being challenged, or not being seriously challenged in his or her constituency. Many of the problems highlighted by Laundry would be overcome by a notional constituency, that is, a constituency separate from those representing a specific part of the state. It could not then be argued, for example, there was any disfranchisement of constituents or any denial of the representative principle by not allowing the speaker a vote on the floor of the House. It would also strengthen the perception of impartiality in the exercise of a casting vote. In 1939 a House of Commons select committee was established:

to consider what steps, if any, should be taken to ensure that, having due regard to the constitutional rights of the electors, the Speaker during his continuance in office, shall not be required to take part in a contested parliamentary election.

The committee considered a number of possibilities, but all suggestions were rejected as being contrary to the spirit of the English *Constitution*. The committee eventually recommended no change be made. Sixteen years later *The Times* commented on 19 May 1955:

It is not difficult to devise ways in which the Commons might have its impartial Chairman yet no constituency lack an ordinary representative. But they all weaken the continuity of the Speaker's office on two of the grounds on which the Members respect his authority: that he has come to the House by the same route as themselves and that they, not their predecessors, have confirmed him in his position.

Whilst acknowledging the views of both the select committee and *The Times*' journalist it is respectfully suggested that the situation in Australia is considerably different. This is especially so, given the comparatively small numbers of most Australian parliaments. In the United Kingdom the speaker's re-election to parliament has not, in most instances, been contested with great intensity, although recent elections have seen this convention somewhat eroded. For years Australian speakers have been criticised, perhaps rightly or wrongly, for the partisan element they have brought to their conduct of proceedings. While speakers have exhibited partisanship in varying degrees the necessity to contest their own constituency against any number of opponents makes it extremely difficult to discount the suggestion that withdrawal to a notional constituency would be a benefit.

The general tone and dignity of parliament have been severely criticised in recent years. The need for impartiality in the chair and the perception of impartiality has never been more important. This can only be achieved if the speaker is divorced from party politics. This seems a compelling argument in favour of a speaker being free from the pressures of fighting for survival on the political front.

The Times' observation does, however, highlight two matters which are relevant in both the United Kingdom and Australia, being that the speaker is elected from the parliament and that each parliament has the right to elect its own speaker. My proposal addresses both issues. Firstly, in a very real sense, my proposal ensures the speaker comes from the same background as other members, is a member of considerable experience and brings to the position knowledge and understanding. Secondly, it grants to each parliament the undisputed right of members to vote a speaker out of office albeit by a formula that requires a majority which normally extends beyond the influence of a single party. This requirement of a substantial majority has two strands of support. Firstly, it should be the House's decision across party lines and not the decision of the government of the day which removes its speaker should that need arise. Secondly, it is

almost without precedent for an incumbent speaker to be defeated in a vote. Where there have been changes of speaker within the term of a government it has been achieved by persuasion.

Given that many elements of Australian parliamentary process have been defined by statute there seems no reason why this aspect cannot also be defined, particularly when there is likely to be considerable public benefit.

The procedures I now outline are intended to lead to the selection of a speaker who:

- has reasonably long service in the parliament;
- has demonstrated an interest in the parliament and its procedures; and
- is prepared to accept the special challenges which are essential to the office.

This person should be prepared to make decisions, both procedural and administrative, without fear or favour and a commitment to parliament above all party political considerations.

I believe this can be achieved by amending the Constitution to provide

- for a term of office not exceeding eight years, that is, the equivalent to two parliaments
- election by secret ballot conducted by the State Electoral Office no earlier than one year and no later than three years after a general election
- the speaker to continue as a member-at-large serving a notional electorate
- the vacancy created by such election to be filled within twenty-eight days by a member from the same party as the speaker.
- the speaker cannot continue as, or become, a member of any registered political party
- after vacating office for whatever reason be ineligible to continue, or seek re-election, as a member of the Legislative Assembly
- removal from office to require a two-thirds majority of members
- any member nominated for office to have completed at least two full terms of the Legislative Assembly and have during such period served at least two years as either chairman of committees or temporary chairman of committees; or completed three terms of the parliament.

It will be seen that the election of speaker will take place during the course of a parliament rather than immediately after an election, as is the present constitutional requirement. A new speaker should be a member who is known and respected by all members and who has demonstrated a commitment to the traditional values and constitutional functions of the parliament. The election of a new speaker in the immediate post-election period generates a considerable degree of political pressure as the office is invariably considered one of the spoils of victory, or a bargaining tool with an independent to secure a government majority.

While provision is made for election by secret ballot on a simple majority it is of obvious benefit to the stature of the position to be elected unanimously. Selecting a person respected and supported by both sides can be achieved by consultation, known in Commons parlance as “the usual channels” between the parties.

Laundy, in relation to this aspect, makes reference in Chapter 3 of *The Office of the Speaker*, to the benefits of consultation when a retirement takes place between parliaments rather than in the wake of a general election.

The practice of some parliaments not to utilise the services of opposition temporary chairmen of committees is to be deplored. The requirement of two-years experience in the chair would necessitate the involvement of all temporary chairmen on a regular basis. This would be of considerable benefit. In most parliaments it is quite customary for opposition members to preside during debate and in committee and there is a strong record of diligence and impartiality from those charged with the responsibility.

The office of speaker should be accorded the respect and high stature befitting both its real and traditional importance to the parliamentary system. Under the system outlined here I believe the position would attract those who have suitable qualifications for the office. It would encourage anyone interested to see it as a fitting climax to a distinguished political career. It would give those truly interested in the parliament and its processes a chance to contribute their thoughts and energies for the overall benefit of the institution. Hopefully if the parliament itself is capable of recognising the need to lift its image and to build self-respect and a sense of dignity this one vital step could lead the way.

It could also be the first significant step in a process of parliamentary reform which would make Australian parliaments more relevant and meaningful.