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PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

DISSENT FROM RULING

SPEECH

Wednesday, 1 December 2004

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner	Responder
Speaker Gillard, Julia, MP	Question No.

Ms GILLARD (Lalor—Manager of Opposition Business) (2.58 pm)—I move:

That the Speaker's ruling be dissented from.

Mr Speaker, we are now faced with the grand absurdity, courtesy of your ruling, that you are maintaining the ability to make rulings which impact on one side of the House but not on the other. Your job, as outlined in the standing orders and as breached by this ruling—and why this ruling is inappropriate and must be dissented from—is to treat every member of the House equally and with respect and to allow them to do their jobs as members of the House of Representatives. Certainly, some members are members of the government, and some members are members of the opposition. Certainly, some people are ministers, and some people are not. But each of us here has an equal standing in representing our constituency, and it is not appropriate to have rulings that differentially impact upon the opposition.

Mr Speaker, your ruling, as I understand it, is basically this: if at any time a government minister, in the course of question time, wants to table any document that they think supports the government's case, they are free and at liberty to do so; they can do it at any time. The Minister for Health and Ageing did it today. It was not a document that we had sighted, and he tabled it. No leave was sought or required; you just allowed it to be tabled.

The minister for education, in the grandest of absurdities, has just tabled part of a very public document—that is, the opposition's education policy at the last election. Your ruling then was that you were going to prevent the tabling of documents at the end of answers—unless it was done by a government minister. That must have been the import of your ruling, because you allowed the minister for education to table a document at the end of an answer but indicated you would not allow documents to be tabled at the end of answers generally. So what you are saying, Mr Speaker, is that you would rule that a government minister, at any time—during an answer, at the end of an answer, at any time they want—can table a document. But if a member of the opposition seeks leave to have a public document tabled, you will ensure that that does not occur. So we have a complete double standard between what is expected of the government and what is expected of the opposition. It is a complete double standard.

Mr Speaker, when you commenced as Speaker in this parliament—and it was only several short sitting days ago, and I think it is a tragedy that we are at this place already—you said that you wanted to lift standards in this place. I will take you to the things you said on the first day that you became Speaker. You said there was a new set of standing orders, and of course there is. You went on to say how you were going to help this House. You said you were going to apply these new standing orders and you thought they would be of assistance to the House. Then you went on to say the following about the attitude that you would bring as Speaker. I quote:

Today I will restate some points on questions and the importance of addressing all comments through the chair. The purpose of questions is to seek information and to hold the executive to account.

Precisely, Mr Speaker. That is the purpose of question time. You went on:

For example, questions should not suggest their own answer or contain scorn or derision. I would remind members that lengthy questions not only encourage long answers but make it much more difficult for the Speaker to rule on relevance.

And I take you to the following line, Mr Speaker, because I think it is very important to the matters that have been under consideration in this House today:

Questions will alternate and, in line with my immediate predecessors, I will not be allowing supplementary questions. I also do not feel it is appropriate that leave should be sought for the tabling of documents already available publicly.

Mr Speaker, in the extract I have before me, from the House of Representatives *Hansard* on 17 November, at the time that you commenced as Speaker, you outlined to this House a series of rules about how you thought it

should operate. From the point of view of the opposition, we were not happy with some of the rules you decided to outline. For example, we on this side have a view about supplementary questions; we on this side have a view about our questions being ruled out because they are lengthy; and we have got a view about our questions being ruled out because they might contain colourful language. All of those things were outlined as the view that you were going to bring to question time. They are matters that you raised about the standard you were setting; and in that standard, without qualification, you said—as I have read:

I also do not feel it is appropriate that leave should be sought for the tabling of documents already available publicly. Accordingly, requests for leave will not be put to the House where a document is already on the public record—for example, a newspaper report or a *Hansard* extract.

Those are the standards you set for yourself.

Mr Tuckey—He's stuck by them!

Honourable members interjecting —

The SPEAKER—Order! Members will allow the member for Lalor to be heard.

Ms GILLARD—Mr Speaker, if you would like me to resume my seat while you deal with the member for O'Connor, I will.

The SPEAKER—The member for Lalor has the call.

Ms GILLARD—In terms of the obligations in this place, there are really only two obligations that matter. One is the impartiality of the Speaker and the other is the consistency and perceived consistency of rulings. If we cannot have rulings that apply equally to every member of this House, then the House will always be in a state of disorder. It is inevitable if the perception, as opposition members walk in here every day, is that the standing orders mean nothing, that the obligation for impartiality will be waived and that opposition members will be treated differently from members on the other side of the House. The tragic effect of your ruling, Mr Speaker, is to put us in precisely that position.

There is only one honourable course here. You either rule and it applies to everyone or the ruling is withdrawn. We needed to move a dissent motion to make that point. You cannot rule in a way which means that government ministers get to do what they like when they like and the ability of a member of the opposition to seek leave for the tabling of a document is curtailed. That cannot be in accordance with your obligation for impartiality, and it is not even in accordance with what you said on your very first day.

It does not give the opposition any joy to be moving dissent motions during question time. That is not something we want to do. We want to be here holding the executive government to account, and that is the purpose of question time. But today we have seen, not only in relation to this matter but in relation to the answer of the minister for education more generally, an unsustainable practice about the way in which the standing orders are not being applied. The minister's question was inevitably in anticipation of debate. If the minister wants to come in here and make a contribution on education funding, as a minister in the government he has got many opportunities to do so. We all know that. His key opportunity is, of course, when he brings a bill to this parliament, and he has brought a bill to this parliament—a bill about some \$30 billion of school funding. If he wants to make a contribution on what he believes are fair funding patterns, then he can make that contribution on the bill. But we were in the middle of a debate. It was the debate that was adjourned to allow question time to be brought on. We ended up with the absurdity where apparently the minister can say whatever he likes about school funding and it will not be held to be in anticipation when the bill that has been adjourned is a \$30odd billion school funding bill. That was the first and incredible lapse of the application of the standing orders.

Mr Speaker, I know this would give you no joy, but you would have to say that it was raised with you by way of points of order on more than one occasion by a number of opposition members—by the member for Fraser, the member for Denison, the Deputy Manager of Opposition Business, the member for Brand and the Leader of the Opposition—and you did nothing to correct it: a clear breach of the standing orders. Also—and I have raised this matter with you, Mr Speaker—we had difficulties yesterday in relation to a clear breach of the standing orders about whether or not a document from which a minister is reading is confidential. It was another clear breach of the standing orders. If you go back to the relevant *Hansard*, it is crystal clear that that is a clear breach of the standing orders. Then there is the immediate ruling with which we are dealing, which on this occasion is another

example of not only a problem with the standing orders but also your actually ruling in a way which would have a differential impact on members of this House.

Mr Speaker, this ruling cannot stand. I would be saying to government members opposite—and I am sure the Leader of the House will be responding to this dissent motion—that they need to be considering the obligations they have as parliamentarians to ensure that there is fair practice in this House. Mr Speaker, I put to you what is clearly the case with the way in which this House runs: this House runs well when people believe that they are going to get a fair go; it runs badly when people believe they are not going to get a fair go. Mr Speaker, in my many discussions with you or the discussions we have had since you have taken this office, I have indicated that from the opposition's point of view we do not want to cause problems in the House of Representatives, we want to see the House run, but we do insist on getting a fair go. From a number of incidents in the last few sitting days and most spectacularly from today, it has become apparent that in question time we are not getting a fair go. Your ruling today is the clearest example of that and that is why it needs to be dissented from.

Mr Speaker, I take you to page 163 of *House of Representatives Practice*. I think really this is where this debate starts and finishes. It says:

One of the hallmarks of good Speakership is the requirement for a high degree of impartiality in the execution of the duties of the office. This important characteristic of office has been developed over the last two centuries to a point where in the House of Commons the Speaker abandons all party loyalties and is required to be impartial on all party issues both inside and outside the House.

Mr Speaker, you would recall that that is a standard that the Labor Party has urged for Australia—that we have that degree of impartiality in our speakership. To go on with *House of Representatives Practice*, it says:

In concert with this requirement the principle has been well established that the Speaker continues in office until ceasing to be a Member of the House.

It continues:

Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized.

So we have here what in law we would refer to as not only the absence of actual bias but also the absence of apparent bias. It is important that each member of this House has faith that the Speaker is acting impartially.

The SPEAKER—I do not want to interrupt, but I would remind the honourable member that this is a motion for dissent from a ruling.

Ms GILLARD—I am dissenting from a ruling that I believe does not meet the standard of impartiality. That is the essence of the case I am putting. I apologise, Mr Speaker, if there is some offence to you in that remark, but I do not have an alternative when faced with a ruling that differentially impacts on members of the opposition and that is not in keeping with the traditions of impartiality of the speakership of the House of Representatives. That is why I have dissented from this ruling and why this ruling cannot be allowed to stand—because it does not meet that benchmark of impartiality.

We all know that this place is designed basically so that the minority get to have a say and the government wins. That is the way this place is designed. That is the essence of the way in which our system of government works. The government has the numbers and it gets its way at the end of the day. The only protection that members of the opposition, members of the minor party and, indeed, the Independents who sit in this House have to ensure we get our say in the face of a majority government and, I may I say, in the face of a very cocky recently reelected government, an arrogant government—

Mr Tuckey—Mr Speaker, I raise a point of order. You have already drawn the member's attention to the fact that they are conducting a dissent motion—not a censure motion, which was their right.

The SPEAKER—The member is in order.

Ms GILLARD—Thank you, Mr Speaker. As I was saying, the only protection that members of the minority political party or, indeed, the Independents who sit in this House have is the fair application of the standing

orders. That very difficult task falls to you, Mr Speaker, and we understand it is a difficult task. This is not a place for the fragile; there is no doubt about that. It is a difficult task but it becomes a more—

An opposition member—Look out! Here comes Mr Tuckey!

The SPEAKER—Order! The member for Lalor has the call.

Ms GILLARD—Thank you, Mr Speaker. I was momentarily concerned for your wellbeing. I was silenced by my concern for your wellbeing, but I am now assured that you are physically safe in this place and I will continue, because whilst we have disagreed with your ruling, Mr Speaker, there are of course many things we would not see happen to you in this place. I think we are safe from them now.

The way in which standing orders are applied and rulings are made needs to be impartial, as between members in this place. Government ministers table documents; that happens, absolutely. The opposition seeks leave to table documents. We cannot have a circumstance where government ministers can do that as and when they see fit, for whatever document they want to table, without any of your rulings applying to that, when on this side you basically embargo our ability to even get leave to table documents. On that point, I say that this ruling fails to give due deference to the House overall as being master of its own destiny on what ought or ought not be tabled.

Mr Speaker, the ruling you have made is one that impacts on us but not on them. It is an unfair ruling—a ruling from which we dissent; a ruling that we do not believe should be allowed to stand; a ruling that we do not believe is in the tradition of this place as it should be, with the maximum amount of fairness distributed between members of this House, allowing each of them an equal standing—understanding, of course, that at the end of the day the majority political party or parties will be able to win the votes and ultimately get what they want. I conclude, Mr Speaker, by reminding you of the words you said, when you first started in the job, on the thing that you wanted to achieve in your speakership. I take you to your very own words:

... I remind members that it is my intention as Speaker to facilitate the smooth conduct of the business of the House. In my view, the general behaviour of members, and the subsequent public perception of the House, is in the hands of members themselves.

It is also, Mr Speaker, in your hands and rests on the impartiality of rulings made.