



Submission 1

**The Acting Chair
House of Representatives Procedure Committee
Parliament House
Canberra ACT 2600**

**Federal Member for Lalor
Shadow Minister for Health**

RE: INQUIRY INTO THE APPLICATION OF THE ANTICIPATION RULE

On behalf of the Federal Parliamentary Labor Party I wish to make the following submission to the Procedure Committee's Inquiry into the Application of the Anticipation Rule.

1. The purpose of the rule

The anticipation rule involves two standing orders – one which applies generally (SO 77) and one applying specifically to questions (SO 100(f)).

Standing Order 77 states:

A Member may not anticipate the discussion of a subject which appears on the Notice Paper. In determining whether a discussion is out of order the speaker must consider the probability of the anticipated matter being brought before the House in a reasonable period of time.

Standing Order 100(f) states:

Questions must not anticipate discussion on an order of the day or other matter.

Also relevant is Standing Order 100(e) which states:

Questions must not refer to debates in the current session, or to proceedings of a committee not reported to the House.

The intention behind the rule, as stated in House of Representatives Practice, is “to protect matters which are on the agenda for deliberative consideration and decision by the House from being pre-empted by unscheduled debate”.

2. How the rule has been applied

It has been noted that there has been a tendency in recent years for rulings concerning anticipation to be more relaxed. This has particularly been the case with matters of public importance and adjournment debate.

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However in the current Parliament the 'relaxed application' of the rule during Question Time has already been taken to such extremes as to undermine the very purpose of the rule.

Case 1

During Question Time on December 1, the Member for Indi asked a question of the Minister for Education about Government funding for schools. The question was asked in the middle of debate on the Government's legislation, which was the legal authority for school funding.

Case 2

During Question Time on December 9 the Prime Minister referred to the report from the Royal Commission into Centenary House which was scheduled for tabling and debate later that day.

3. Consequences of the current application of the rule

The major issues with regard to the application of the anticipation rule have arisen during Question Time in respect to questions asked by Government members. The Speaker's rulings have enabled Ministers to put forward Government positions on issues either currently before the House or scheduled as House business on the same day.

The Speaker's recent rulings have the potential to lead to continuing confusion in three areas:

- When is alluding to a particular subject matter not alluding to a particular bill, especially of the bill in question is a wide-ranging piece of legislation?
- Should the Speaker have any discretion about matters that anticipate House debate that is currently on-going or scheduled for the same day?
- How and where is notice of the day's proceedings given?

4. Recommendations for future application of the rule

Consistency with the purpose of the rule

Any possibility that a narrow application of the anticipation rule will constrain debate, accountability and the ability to ask questions can be resolved by a clearly articulated purpose of the rule.

This will involve consideration of the timetable of the House and its Committees, and reference to both the Notice Paper and the blue schedule.

Timing considerations

Strict application of the rule should be required on all matters that are currently under debate in the House or scheduled for debate within the next 24 hours.

Notice Paper

The role of the blue sheet should be considered in addressing what is scheduled for the day's program. As noted elsewhere and by previous Speakers, the Notice Paper is often only a guide to the day's program, and at the resumption of a sitting period, may constitute an ambitious list of planned activities, some of which will not take place within the scheduled timeframe. In contrast, the blue sheet is dated, and details a specific agenda. This agenda can only be changed at the instigation of the Manager of Government Business.

Incidental reference vs substantive reference

Clearly the use of words and phrases that are likely to be part of legislation cannot and should not be subject to the rule. However it is expected that the Speaker, in the knowledge of the day's schedule, will be alert to the appropriateness of any such reference and apply his rulings equitably.

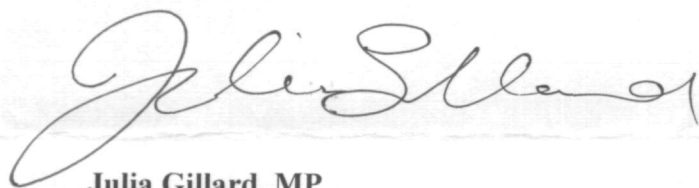
Accountability vs political gain

The ability of the Opposition to ask questions without notice of the Government is an important mechanism of accountability in the parliamentary system. The application of the rule should not be applied in such a way that this accountability is limited.

In the application of the rule to Question Time, the Speaker must have due regard to the fact that this part of Parliamentary proceedings is broadcast publicly, and that it is therefore inappropriate for any political party to seek to use a lax application of the rule for political gain.

I am grateful for the Committee's consideration of these issues, and I remain available for further input and discussions as required.

Yours sincerely



Julia Gillard, MP
Shadow Minister for Health and Manager of Opposition Business

22/12/2004.