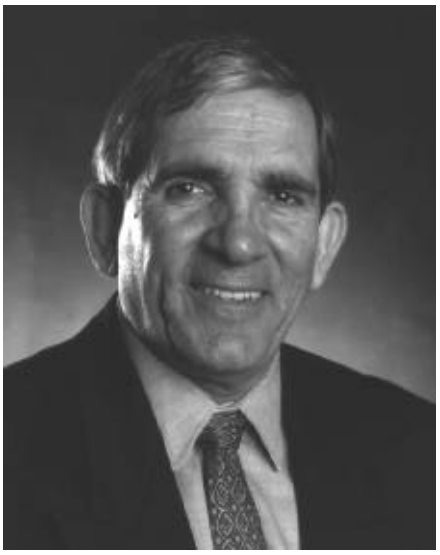

Speech by

# Hon. J. FOURAS

## MEMBER FOR ASHGROVE

Hansard 8 August 2001

### STANDING RULES AND ORDERS

**Hon. J. FOURAS** (Ashgrove—ALP) (12.37 p.m.): I am pleased to take part in the debate on the Premier's motions, which address three issues: the sub judice convention; procedures for raising a breach of privilege or contempt; and the need for a new standing order for the declaration of pecuniary interests, both in debates and votes.

Free speech in parliament is fundamental to our Westminster system. Since the Bill of Rights of 1689 it has been settled under article 9 that 'freedom of speech in debates or proceedings in parliament ought not be impeached or questioned in any court or place out of parliament'. This privilege was hard won. It was born out of the blood and carnage of the English civil war, when the supremacy of parliament was finally established through the Bill of Rights of King William and Queen Mary. Since that time the three great pillars of parliamentary democracy and a free society have been parliament's privilege of free speech, the parliament's power of the purse and the parliament's sovereign power to make laws binding on the Crown and citizens alike.

Article 9 of the Bill of Rights has ended up as section 40A of Queensland's Constitution Act 1867. It basically says that a member of parliament can say in parliament anything which if said outside could be taken up in a court. The sub judice convention has been the one limitation on the freedom of speech. It is a self-imposed limitation by the parliament. It restricts members from saying things in debates in order to avoid prejudicing litigants before the courts. This has led to an unacceptable situation. For example, debates on matters before bodies such as the CJC are freely discussed by the media and the public, but members of this House are restricted from doing so in the House itself.

The current sub judice convention was established in 1976. There has never been any argument that matters in courts exercising a criminal jurisdiction should not be referred to in parliament. There is no doubt that that would be prejudicial to a litigant. But the issue of most concern to the Members' Ethics and Parliamentary Privileges Committee, which was responsible for making this recommendation—and of which I was a member—was the principle that—

... Current proceedings before a Royal Commission should not be referred to in motion, debate or questions.

In response to what the previous member said, it is important to note that I was Speaker of this chamber for more than six years, I think, and the advice that I was given then as Speaker was that inquiries by the CJC really did come under proceedings before a royal commission and, therefore, if I was to uphold the convention of this House I was obliged to rule out of order motions, debates or questions on that matter. That was the legal advice I received as Speaker, and I am sure that it would have been the advice that would have been given to any other Speaker. Later I will talk about the problems that that has created in this chamber for the presiding officers.

Whereas we have this convention that goes back to 1976, the courts have increasingly recognised that the press and electronic media have a right to canvass matters of public interest and that the public interest takes precedence over ensuring that judicial processes may not be prejudiced. That has been happening while we have sustained that convention here. Public inquiries are justified on the basis that the government of the day seeks guidance on a matter of public concern by obtaining and examining evidence through an impartial judicial process. People heading such inquiries would not be improperly influenced by anything said in this parliament. If a matter is of sufficient importance to justify a public inquiry, then obviously it is of equal importance not to restrict members from debating the

issues pertaining to that in this parliament. In this particular respect, with regard to royal commissions, the sub judice convention no longer applies to the House of Commons or the Canadian and New Zealand parliaments.

I was a member of the Members' Ethics and Parliamentary Privileges Committee which brought down report No. 7 of 1997. We found quite unequivocally that there was no reason at all for the convention to apply to royal commissions, tribunals and other bodies examining similar functions. I remember being in this House during the Shepherdson inquiry when the current Speaker got into all sorts of problems by referring in this chamber to that outdated convention. In fact, we had in the previous parliament an unprecedented motion of no confidence in the Speaker.

The chair has always had a discretion in these matters. When I was visiting the House of Commons, I asked why its members did not move motions of no confidence in the Speaker. I was told that, 'Our Speaker must have had a particular reason for disagreeing with a ruling or making a ruling which may not be obvious to us; but he must have had a particular reason to do that.' The bottom line is that the chair has always had a discretion, and that discretion should always remain with the chair. The convention has always existed. But as mentioned previously by the member for Caloundra, this could lead to a perception of bias, because the Speaker is then seen to be making a decision about an inquiry which, quite often, could have an impact on what may happen to the government of the day.

The second matter that we are debating today through this motion is how we treat matters of privilege. Standing order 115, which allows members to rise in this House on a matter of privilege suddenly arising, really is the most abused standing order in this parliament. Quite often it is about something that has been said previously by a member. I remember that, regularly, the former Leader of the Opposition would get up at the end of question time—a time allocated in the sessional orders or standing orders to government business—and claim that a member had misled the House. That is amazing.

Let us be clear about what is a contempt and what is said in here. It is a serious contempt when a member deliberately misleads the House. It is not a debate about whether a person has said something that is arguable. Referring back to Socrates, none of us would ever open our mouths in this chamber because we would never know what the truth was. So if we all had to speak the 'truth' every time we rose in this House, we would never speak in this chamber. So much of what is said about a matter of privilege suddenly arising is quite out of order.

A matter of privilege suddenly arising should be about something that suddenly restricts a member from his rights and his privileges as a member of this House, such as somebody locking someone up in a bedroom, or somebody shanghaiing someone, or threats being made to intimidate a member. So although the chair must listen to a particular concern suddenly raised by a member, it has always been my understanding that it was never a matter of privilege.

It is good that we have in this chamber a process whereby matters of privilege are raised—writing to the Speaker, being precise, and then the Speaker determining whether such a matter should go ahead. I support very much the notion that the House should be tested. If a member feels aggrieved that he or she does not have the position they want, under this procedural change that member should be entitled to move that the matter be referred to the Members' Ethics and Parliamentary Privileges Committee.

As a member of the Members' Ethics and Parliamentary Privileges Committee, I remember a situation in which we had two choices about a minister of the Crown. One was that a minister of the then Borbidge government was foolish and the other was that he had misled the House. The committee decided, rather than to say that it was a deliberate misleading, that the minister had been foolish.

I refer now to the third part of the first motion before the House, which relates to pecuniary interest. It is important to have this new standing order, which clearly sets out within the rules and procedures of our parliament the process that members must follow in debates or in voting on a matter in which they have a pecuniary interest. Too often members deem something to be a matter of pecuniary interest when it is an interest that is held in common with many members of the community; for example, if somebody here has a shareholding in a company such as BHP, he is not going to influence the directors of BHP by what he might say or do in this chamber. I have seen politics being played in this chamber on such a matter.

**Mr Seeney:** On both sides.

**Mr FOURAS:** Of course. Too often members change their views depending on which side of the House they sit on. I do not applaud that. It is one of the saddest and most cynical exercises in this parliament, and that game is played rather poorly.

For example, I remember when CTP was increased by Joan Sheldon and how we on this side thought that it was outrageous. Yet when we did the same thing, the members opposite thought that it was outrageous. We can reverse the arguments, depending on which side of the chamber we sit, which

I think is one of the most galling things about this chamber. But it will always be that way because that is the nature of politics, the nature of the adversarial system that we have in place.

We have had examples of such behaviour in the Western Australian parliament that led, in my view, to the fall of the Court government. A minister of that government did not disclose a pecuniary interest in relation to government action that enabled him to make a lot of money. I think that it is important that we have a process that does not allow that to occur. As I said, I am not talking about matters such as shares. I think that members are in a position to know that if, for example, they own land and if their vote for legislation could result in some development being allowed to take place on that land or something like that, that that is not in the interests of the public. If that land is owned by the member and perhaps some other people, that member should state that he or she has a pecuniary interest and that member should consider whether to vote on legislation relating to it. If that member votes on that legislation, that should be done after the member has made that pecuniary interest public. I think that is important.

Ultimately, it is important that the rules and procedures of this House are dynamic. In many ways in today's society we have the electronic herd running roughshod over the ability of governments to govern. As a result, in this cyber age we are in an electronic straitjacket. We ought to be a contemporary parliament. We cannot have a sub judice convention that does not exist in other parliaments that operate under the Westminster system, and that certainly does not exist in other state jurisdictions.

I commend the Premier for these motions. I commend the three items that are before the House. I am heartened by the degree of unanimity, in a parliamentary sense, in which we have addressed these matters. I think that it is a good sign that, when things are as clear as this, we do not play politics in this chamber. I am pleased to take part in one such debate. I commend the motions to the House.

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