



Speech By
Amy MacMahon

MEMBER FOR SOUTH BRISBANE

Record of Proceedings, 1 December 2021

MOTION

Dissent from Speaker's Ruling



Dr MacMAHON (South Brisbane—Grn) (6.13 pm): I move—

That the Speaker's ruling of 17 November 2021, that the Big Bank Levy (COVID-19 Health Response) Bill 2021 is out of order because it is a revenue bill, be dissented from.

This is the second private member's bill that I have introduced in this place that has been struck from the *Notice Paper*. This time, as I said, I move dissent to the Speaker's ruling that the big bank levy bill is out of order because it is a revenue bill. My Greens colleague, the member for Maiwar, and I have been in touch with the government, urgently sharing with them the advice we have from Queensland constitutional law experts about this ruling. Our advice from legal experts, including those involved in the very drafting of the Queensland Constitution Act—

An honourable member: Name them.

Dr MacMAHON: I am getting to that. Our advice is that the Speaker's ruling is incorrect in saying that private members cannot make revenue proposals in this place without a note from the Governor. We are urging the government to support this motion of dissent from that ruling to allow the big bank levy bill to be debated. In a week when ASIC has launched six lawsuits against Westpac—including one for charging unauthorised fees to 11,000 of its deceased customers—it is more critical than ever that the government steps up to take on the big banks. If we debated and passed this bill, we would raise \$1 billion every year that we could be putting straight into our health system—

Mr BAILEY: Mr Speaker, I rise to a point of order. The member is clearly debating the content of the motion that was moved two weeks ago and not the procedural nature of the dissent motion. I ask her to come back to the procedural motion.

Mr SPEAKER: Member for South Brisbane, there is some relevance to that point of order. I know you have only just briefly touched on it. I will allow you some latitude, but please ensure that you are focused on the procedural motion before the House.

Dr MacMAHON: Thank you, Mr Speaker. Instead, the Speaker has ruled that my bill should not be debated because, on an incorrect reading of the Constitution, private members' bills cannot propose revenue-raising measures. Apparently, only ministers can do that. However, the advice we have received from the Hon. Alan Wilson QC, Professor Gerard Carney and Professor Graeme Orr is that the ruling is incorrect. In line with this advice, the bill must stand and the government needs to bring it on for debate in order to fix the looming health crisis.

It is staggering to see how conservative this government is compared to its Labor colleagues in other states. South Australia introduced a very similar bill in 2017. This government will not even support a mention of it in parliament. The crossbench should not be silenced on the basis of vague constitutional

arguments. I would like to table this letter from the Hon. Alan Wilson QC, a retired Supreme Court judge, and Professor Gerard Carney, author of *The Constitutional Systems of the Australian States and Territories*, who was also involved in the very drafting of the Queensland Constitution. I table this advice.

Tabled paper: Letter, dated 29 November 2021, from Hon. Alan Wilson QC and Professor Gerard Carney, to the member of Maiwar, Mr Michael Berkman MP, regarding advice on a ruling given by the Speaker on 17 November 2021, and a letter, dated 29 November 2021, from the University of Queensland Law School, Professor Graeme Orr, to the Speaker of the Legislative Assembly, Hon. Curtis Pitt, and the Clerk of the Parliament, Mr Neil Laurie, titled 'Status of non-government bills on taxation measures' [2035](#).

The letter cites sections 65 and 68 of the Queensland Constitution, which allow, on their proper reading, the parliament to consider non-government taxation bills. It goes on to say that this reading 'is informed by a consideration of UK and Australian Commonwealth, and Queensland'—

Ms RICHARDS: Mr Speaker, I rise to a point of order. We had a ruling earlier from the Deputy Speaker in regards to congregating for discussions due to COVID.

Mr SPEAKER: I am already on top of it, thank you. Sorry for the interruption, member for South Brisbane. Please continue.

Dr MacMAHON: The letter said that this reading 'is informed by a consideration of UK and Australian Commonwealth, and Queensland, constitutional law and ... parliamentary practice (including the terms of the Queensland *Constitution Act 1867*)'.

In a Westminster system such as ours, constitutional conventions are critical. While parliamentary practice must evolve to keep up with community expectations, there needs to be a careful identification of what values we want to elevate in this practice. I find it very disappointing that Westminster conventions that enhance democracy, such as ministerial accountability, have eroded rapidly under successive Labor and Liberal governments, especially in the last two decades. Further, I would be so disappointed to see Labor support a ruling such as this that relies on Westminster conventions which are both misapplied and would greatly constrain democracy.

This letter respectfully says that the Speaker's ruling would have more force if it applied to legislation dealing with supply, rather than extending to taxation bills, which this is. To go into a little bit of constitutional detail, it points out that section 65 plainly invests the taxation power in the Legislative Assembly but section 68 only applies to appropriation bills. It is right there in black and white. There is nothing creative about this argument. We are being black-letter traditionalists when it comes to this. The letter states that there is nothing in the standing orders to go against this, and it concludes that the Speaker's ruling appears to be incorrect.

I would like to table another letter from Professor Graeme Orr, an expert on the law of politics including parliamentary law who is based at the University of Queensland law school.

He states that non-government bills proposing taxation measures are currently in order in the Queensland Legislative Assembly. It clearly explains how Queensland parliament is different from federal parliament. The Speaker's ruling relies on *House of Representatives Practice* when we are dealing with the Queensland Legislative Assembly. The Commonwealth Constitution does prevent the Senate from initiating taxation measures, but we do not have an upper house here in Queensland. In the federal lower house, it is standing orders that prevent anyone other than a minister from introducing taxation proposals, but there are no such standing orders here—just as there is no history of federalist compromise trying to make a strong upper house work in a Westminster system.

Professor Orr states that the UK provisions, whilst more liberal than the Commonwealth, are at most indications of evolving practice at Westminster. As an aside, this whole debate has really opened my eyes to how firmly the British colonial project is embedded in our legal and political system. Professor Orr concludes that this place is free to reform Constitution and standing orders if it wants to ban crossbenchers from making taxation proposals; however, it should do so after reflection, consideration by relevant committees and a vote.

We have also been scouring the extrinsic materials from the passing of the Queensland Constitution Act and any extrinsic materials around the 2011 change to standing orders. There is nothing in there to suggest that the drafting of these documents had the intent to cut private members out of making revenue-raising measures.

On this body of advice, and my own reading of Queensland's statutes and rules, it is clear that I, as a crossbencher, am free to make revenue proposals in Queensland parliament. It is also clear that the Queensland community wants more democracy from this government, not less. What is not yet clear is the government's position on this. Will it accept the advice of Queensland constitutional experts or will it rely on an incorrect ruling perhaps to suit its own ends to stifle democracy? At a time when the big banks are bolstered by \$188 billion in ultra-cheap loans from the Reserve Bank, they are as profitable as ever—

Mr KELLY: Mr Speaker, I rise to a point of order. The member is going to the substance of the bill that has been ruled out of order.

Mr SPEAKER: I am being very careful to listen, member for South Brisbane. This must be procedural. You have been given guidance previously. Please continue.

Dr MacMAHON: Based on the weight of evidence that I have put forward today, it is essential that we debate this bill—particularly essential in light of the debate we have just had to fund our hospital system with the staff and beds it needs. I am urging all members in this House to support this motion to dissent from the Speaker's ruling, and I am urging Labor in particular to stand by the Queensland Constitution and democracy in this parliament.