



The Hon Tony Burke MP

Shadow Minister for Environment and Water
Shadow Minister for Citizenship and Multicultural Australia
Shadow Minister for the Arts
Manager of Opposition Business
Member for Watson

Mr Tony Pasin MP
Chair
Standing Committee on Procedure
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Mr Pasin

INQUIRY INTO PROVISIONS RELATING TO DISORDER IN THE HOUSE

Thank you for the opportunity to contribute to the Committee's inquiry into the provisions relating to disorder in the House, with specific emphasis on sanctions against disorderly conduct.

My response to the Committee's terms of reference is as follows:

- Overwhelmingly, the most commonly used sanction against disorderly conduct in the House is the Speaker directing Members to leave the Chamber for one hour under Standing Order 94(a) (**SO 94(a)**). This most often occurs in Question Time and in response to Members interjecting or Members continuing to interject after being warned by the Speaker.
- There has been a marked increase in the use of SO 94(a) across the last two Parliaments compared to previous Parliaments. For example, Chamber Research Office statistics show the average use of SO 94(a) in the hung 43rd Parliament was 1.5 times per day, 2.7 times per day in the last 44th Parliament and 2.8 times per day in the current 45th Parliament (up until the last sitting day on 22 June 2017).
- The reason for the increased use of SO 94(a) across the last two Parliaments is not immediately clear. It could suggest an apparent rise in the number of instances of disorder or it could suggest a stronger inclination of recent Speakers to use SO 94(a)

to enforce stricter standards in the last two Parliaments.¹ However, a comparison of the use of SO 94(a) across the 43rd hung Parliament and the current 45th Parliament does not suggest that the closeness of the numbers in the House has played any part in the increased use of SO 94(a), with the average use of SO 94(a) per sitting day lower in the closer hung 43rd Parliament than it is in the current 45th Parliament with a one-seat majority Government.

- The fact that the most common sanction for disorderly conduct is SO 94(a) and is in response to interjections suggests there has not been increase in the seriousness of disorder in the House.
- In these circumstances, there is not a clear case for introducing any new type of sanction against disorderly conduct eg. an intermediate sanction between SO 94(a) and naming.
- In fact, SO 94(a) is still fulfilling the original purpose for which it was designed, that is, as a means of removing a source of disorder quickly and with little disruption to the House instead of as a form of punishment or deterrent. The sanction now found in SO 94(a) was introduced in response to recommendations by the House of Representatives Standing Committee of Procedure in 1992 and, finally, in 1993. The Committee's 1993 report stated "*The committee considers that order in the House would be better maintained if the Speaker were to have available a disciplinary procedure of lesser gravity, but of greater speed of operation [than naming]. The committee proposes the Speaker be given the power to order a Member to leave the Chamber for a limited period. **The committee sees such a mechanism as a means of removing a source of disorder rather than as a punishment. It would enable a situation to be defused quickly before it deteriorated, and without disrupting proceedings to any great extent*** (own emphasis)."²
- However, if in the face of the above, the Committee was still minded to consider the introduction of any new type of sanction for disorderly conduct, the Committee must give serious consideration of:
 - Whether a discretionary decision of the Speaker to use any new type of sanction for disorderly conduct could cause a substantive difference in the laws that were passed by the Parliament. At least in recent memory, there has not been an instance where the use of SO 94(a) has made a difference to the laws that were passed by this Parliament. This risk is now largely offset by the fact that SO 94(a) is most used during Question Time which is ordinarily followed by the Matter of Public Importance debate during which divisions do not ordinarily occur. However, there remains a significant risk in the current Parliament that the outcome of a vote could still be influenced by the use of

¹ Such suggestions were advanced as possible explanations for an increase in namings after SO 94(a) was introduced: Rob Lundie, 'That's it, you're out: disorderly conduct in the House of Representatives from 1901 to 2013' (Research Paper Series 2013-14, Parliamentary Library, Parliament of Australia, 2013) 11.

² House of Representatives Standing Committee on Procedure, Parliament of Australia, *About Time: Bills, Questions and Working Hours - Report of the inquiry into reform of the House of Representatives* (1993) 28.

SO 94(a) on a Monday as there is no Matter of Public Importance debate that day. Barring Members from the Chamber for longer periods of time through changes to Standing Orders may see criticism emerge that the outcomes of the House had been influenced through the introduction or use of a new type of sanction for disorderly conduct. **It would be of grave concern if changes to Standing Orders were made that had the effect that a discretionary decision of the Speaker could cause a substantive difference in the laws or the decisions made by the Parliament.** The vote of every Member counts but especially so in the current 45th Parliament where it can be the difference between whether a bill becomes law or not, owing to the Government's one-seat majority;

- Whether any new type of sanction should be restricted so as to have an impact on a Member's participation in Question Time only, that is, the period during which sanctions against disorderly conduct are predominantly used, and not outside that time. For example, a suspension could run across multiple days in Question Time until the suspension time had been exhausted but would not apply outside of Question Time;
- Whether any new type of sanction would best address the most common form of disorderly conduct, that is, Members interjecting or Members continuing to interject after being warned by the Speaker;
- Whether any new type of sanction should be directed towards achieving the original purpose of SO 94(a), that is, removing a source of disorder quickly and with little disruption instead of as a form of punishment or deterrent; and
- The extent to which any new type of sanction would undermine some of the uniquely Australian characteristics of our Parliament – a place where debate can be passionate, serious, fearless and robust.

I look forward to the outcome of the Committee's inquiry.

Yours sincerely

2 August 2017