



Hon Shayne Neumann MP
Chair
Standing Committee on Procedure
Parliament House
Canberra

Dear Mr Neumann

Inquiry into recommendations 10 and 27 of the *Set the Standard* report

Thank you for the opportunity to make a submission to the Procedure Committee's inquiry into recommendations 10 and 27 of the *Set the Standard* report. In this submission I set out some background information that may be of assistance to the committee, as well as identify some options for the committee's consideration.

Recommendation 10

Use of language

Set the Standard recommended that a review of the standing orders be undertaken, with a view to eliminating sexism and other forms of exclusion in the Chamber. Specifically, it suggested (p. 173) that the standing orders should require that the language used in the Chamber does not contribute to the exclusion of women, First Nations people, LGBTIQ+ people, culturally and linguistically diverse people or people with a disability. It also proposed that a review of standing orders could broaden the definition of 'disorderly' behaviour to include acts of bullying and sexual harassment witnessed in the Chamber and could also consider sexist and otherwise discriminatory or exclusionary language as 'offensive', 'objectionable' and 'unparliamentary'.

By way of background, the language in House standing orders has been modernised from time to time since permanent standing orders were first adopted in 1950. In 1994, for example, standing orders were amended to incorporate references to Members in gender-inclusive pronouns, and in relation to parliamentary committees, to omit the term 'chairman' and substitute the term 'chair'.

Current provisions in the standing orders proscribe certain broad categories of speech or behaviour. Standing order 89 prohibits Members from using 'offensive words' against a Member of the Parliament, either House or a member of the judiciary, while standing order 90 states that all imputations of improper motives to a Member and personal reflection on other Members shall be considered highly disorderly. Under standing order 91, a Member's conduct shall be considered disorderly if, amongst other things, they have used 'objectionable words', which they have refused to withdraw, or been considered by the Speaker to have behaved in a disorderly fashion.

It is the Speaker, or indeed the Member acting as Chair at the time objection is raised, who determines whether words used are offensive or disorderly. The Speaker's judgement

depends on the nature of the words, as well as their context. The Speaker may be guided by relevant precedents and rulings by former Speakers, such as those cited in *House of Representatives Practice*. While it could be argued that the current absence of specific types of 'offensive' or 'objectionable' words in the standing orders is a concern, it does mean that the Speaker is not restricted if faced with unanticipated circumstances and can take context into account.

The standing orders give the Speaker the power to intervene and take action against disorderly conduct by a Member and to impose a range of sanctions. These include directing the offending Member to leave the Chamber for one hour under standing order 94(a), or the more serious sanction of naming the Member in accordance with standing order 94(b). The naming of a Member by the Speaker usually precedes a motion by a Minister for the Member's suspension. Under standing order 94(c), the Speaker also has the power to order a 'grossly disorderly' Member to leave the Chamber immediately to protect the dignity of the House.

One option the committee may wish to consider is offering greater guidance to Members on what is considered to be offensive or disorderly. For example, the committee could either itself, or ask the Clerk to, make available focussed briefing material which includes precedents of words and actions which have been found to be offensive, objectionable or unparliamentary in nature. Such briefing could provide greater clarity as to the meaning and scope of the existing standing orders and have an educative effect in relation to respectful behaviour more generally.

Established practices

Set the Standard also suggested that the review could reconsider established practices and unwritten conventions—for example, whether the House might consider alternation of the call by gender and other indicators of diversity. I note that, with some exceptions,¹ the allocation of the call is a matter for the discretion of the Speaker, although it is usual, as a principle, for the Speaker to alternate the call between government and non-government Members. Unless the House determines otherwise, every Member has an equal right to represent the interests of their constituents, including by making a contribution during the course of a debate. If the committee were to consider providing guidance about allocation of the call by gender and other indications of diversity, consideration would need to be given to the practicalities of such arrangements—for example, how Members who were to be given priority would be identified.

Quorum requirements

This same discussion in *Set the Standard* raised the possibility that quorum requirements in the Chamber could also consider diversity. Section 39 of the Constitution allows the Parliament to determine the quorum requirements for the House; this has been done through

¹ For example, standing order 79(b) provides that the Member who moved the motion for the adjournment of the debate is entitled to speak first on the resumption of the debate. New sessional order 65A also provides some guidance to the Speaker about giving priority to crossbench Members who seek the call at certain times.

the *House of Representatives (Quorum) Act 1989*, which sets the quorum simply as 'at least one-fifth of the whole number of the members of the House'. Any formal change to quorum requirements would require legislative change. On this point it is noteworthy that at every sitting throughout the COVID-19 pandemic the quorum requirement for the physical presence of 31 Members in the Chamber was met and the Act was not amended.

It is not clear how the legislation could be amended to mandate diversity. It is possible that such a change could have adverse consequences for Members in the diversity categories if quorums are called for tactical reasons, or significant unforeseen consequences if a change in the composition of the House meant quorum requirements could no longer be met.

Recommendation 27

Recommendation 27 of *Set the Standard* proposes a review of the parliamentary sitting calendar and the Order/Routine of Business 'with a view to enhancing wellbeing, balance and flexibility for parliamentarians and workers in Commonwealth parliamentary workplaces'. The report notes (p. 269) that 'cultural, structural and practical changes' are required to address the issues found by the review.

Sitting calendar

The number of sittings has varied over the years, and over the past 60 years seems to have settled at 60 to 70 sittings in non-election years, and around 50 in years when an election is held.² A program of sittings for each calendar year (also known as a sitting pattern or sitting calendar) is developed and presented by the Government, towards the end of the preceding year. Standing order 29 requires that the program of sittings must be agreed to by the House, and there is sometimes debate in the Chamber on the motion that the program be agreed to. School and public holidays across the eight jurisdictions in Australia, and other significant events, are considered in the development of each yearly program. I note that in discussing the first program of sittings for the 47th Parliament, the Leader of the House advised the House that the program had been informed by issues that were raised in *Set the Standard*, in particular the avoidance of sittings during school holiday periods.³

Hours and order of business

It is not uncommon for the House to consider and amend its hours of sitting. While in earlier parliaments the scheduled time for adjournment could be as late as 11 pm (in the 39th Parliament), since standing orders were amended on 13 September 2016 adjournment has been scheduled for no later than 8 pm on any day of the week. In the past, the hours of sitting included meal breaks; whether it is better for the House to suspend at meal times or to rise earlier has at times been the subject of debate.⁴

Since *Set the Standard* was published, the House has made further changes to its order of business and sitting hours. On 27 July this year, the House agreed to commence on Wednesdays and Thursdays at 9 am (previously 9.30 am) and also agreed to two other

² *House of Representatives Practice* 7th edn 2018, see Appendix 16.

³ HR Deb (27.7.2022) p. 74.

⁴ See for example HR Deb (25.11.1986) p. 3693 and HR Deb (1.5.1996) p. 86.

changes that potentially have an impact on the total hours that Members and their staff spend in Parliament House.⁵ Changes to standing orders 55 and 133 mean that, after 6.30 pm on Mondays, Tuesdays and Wednesdays (when the House is scheduled to sit until 8 pm), quorum counts and divisions will be deferred.⁶ This could mean that Members are not required to remain in Parliament House if they do not have speaking or other commitments, solely to be available to help form quorum or vote in divisions.

I make note that these arrangements do not generally reduce hours of attendance for staff of the parliamentary departments who support the operation of the House. This includes staff in my department, some of whom are required to commence work several hours prior to the commencement of a sitting and to continue well after the House rises.

The changes to standing orders 55 and 133 are consistent with recommendation 27. As these changes have only been in place for a few months, longer-term monitoring may assist in evaluating the full extent of their impact in enhancing balance and flexibility for Members and their staff.

I would be pleased to discuss any of these matters with the committee and to participate in a private briefing in November.

Yours sincerely

Claressa Surtees
Clerk of the House
20 October 2022

⁵ VP No. 2 (27.7.2022) 55-61.

⁶ Except on motion by a Minister.