



Speaker's House Westminster London SW1A 0AA

3 August 2017

Dear Tony

Thank you for your letter of 22 June regarding the Australian Parliament's House of Representatives Standing Committee on Procedure's inquiry into the provisions relating to disorder in the House of Representatives.

Please find enclosed the UK House of Commons submission.

*Best wishes,
Yours sincerely*

Rt Hon John Bercow MP
Speaker

Tony Pasin MP
Chair, Standing Committee on Procedure
House of Representatives
Parliament of Australia

Response of the House of Commons to the inquiry into the provisions relating to disorder in the Australian Parliament's House of Representatives

Powers of the Chair

Under Standing Order Nos. 42–46 (see Appendix 1), the Chair is entrusted with summary and expeditious powers of dealing with disorder. With subsequent amendments, and as interpreted in practice, they provide a graduated code of sanctions for infringements of the rules for the conduct of debate and for breaches of order and decorum, which has been found adequate to deal with all the cases which ordinarily arise. Offences may be classified as follows:

- (1) irrelevance or tedious repetition;
- (2) minor breaches of order;
- (3) the use of disorderly or unparliamentary expressions;
- (4) grossly disorderly conduct;
- (5) grave disorder, and
- (6) obstruction of the business of the House otherwise than by disorderly conduct or persistence in irrelevance or tedious repetition.¹

It is for the Speaker to decide, with regard to the severity of the offence, what power to invoke. The Speaker may instruct Members to resume their seat. In some instances, disobedience may lead to the Speaker requesting the Member to voluntarily leave the Chamber for the remainder of that day's sitting without invoking any standing order. Persistent disobedience may lead the Speaker to invoke Standing Order No. 43, which requires the Member to leave the House and its precincts for the remainder of that day's sitting.

If a Member has disregarded the authority of the Chair, or has persistently and wilfully obstructed the House by abusing its rules, he or she (after generally being given every opportunity to set matters to rights) may be named. That is, the Speaker says "I name Mr William White (or whoever)". Thereupon, usually the Leader of the House, the Government Chief Whip, or the senior minister present, moves "that Mr William White be suspended from the service of the House". If the motion is agreed to, if necessary after a division, the Member is directed to withdraw and suspension (for five sitting days for a first offence) follows. A second offence in the same Session will lead to suspension for 20 sitting days and a third to suspension for a period the House shall decide. Should a Member refuse to withdraw and then resist removal by the Serjeant at Arms, suspension for the remainder of the Session ensues. Members can also be suspended following a motion from a committee (usually the Committee on Standards or the Committee of Privileges). In this instance, the Committee investigates an allegation, allowing the Member in question the opportunity to give evidence and recommends a suspension to the House. Where a Member has been suspended from the service of the House, salary is forfeited during the period of suspension under Standing Order No. 45A (this does not apply to Members sanctioned under the provisions of Standing Order No. 43).

If a Member is suspended for more than 10 sitting days, or, where a specific number of sitting days is not expressed, 14 calendar days, following a report from the Committee on Standards, the Member may be forced to vacate their seat under the Recall of MPs Act 2015.² If the suspension condition is

¹ Erskine May (24th edition), p. 452

² [Recall of MPs Act 2015](#)

met, the Speaker gives notice to the petition officer in the MP's seat. A recall petition is opened for six weeks. If at the end of that period at least 10 per cent of eligible electors have signed the petition, the seat is declared vacant and a by-election follows. The Member who was the subject of the petition is not prevented from standing as a candidate in the subsequent by-election.

If a situation of grave disorder arises in the House, the Speaker may, under Standing Order No. 46, adjourn the House without question or suspend the sitting until a time of their choosing. Suspensions of sittings are of varying length - in the past they have been of between 10 and 30 minutes.

The Chairman and First and Second Deputy Chairmen of Ways and Means (Deputy Speakers), acting in their capacities as Deputy Speaker, have the same powers under the Standing Orders as the Speaker. When acting as chair in the Committee of the Whole House, however, if they are required to exercise their powers to name a Member under Standing Order No. 44, they must first suspend the proceedings of the Committee in order to report the matter to the House, so that the motion is moved in the House itself. A similar course of action would be followed if grave disorder arose in Committee of the Whole House.

The Chair of a General Committee does not have the authority either to order a Member from a sitting, or to name a member. If a Member refuses to withdraw unparliamentarily language or otherwise defies the Chair, the Chair may briefly suspend the Committee. On resumption, if the Member persists in their defiance, the Chair should accept a motion to report the Member to the House. That report would normally be made on the next sitting day. The Speaker would then deal with the offence as if it had occurred in the House itself.

Recent use of powers

In the past 10 years, three Members have been named and suspended from the House for five sitting days under Standing Order No. 44. Three Members have been ordered to withdraw from the House for the remainder of that day's sitting under Standing Order No. 43.³ The Recall of MPs Act 2015 has not been used in respect of any suspensions.

How have powers changed over time

Standing Order Nos. 42-46 have not been substantially changed since their respective inceptions in the late 19th century and early 20th century. The most substantive change occurred in 1998 when Standing Order No. 45A, which withholds Members' salaries if they are suspended, was agreed by the House. The House of Commons Procedure Committee has not considered changes to the provisions relating to disorder in recent times.

Many of the House's various ancient powers to discipline offenders, which have been established by precedent and accepted by the courts under the umbrella of exclusive cognisance, are no longer in use. The Commons' power to commit offenders was exercised frequently until the end of the nineteenth century. The Commons' ultimate power of discipline over one of its own Members is expulsion, thereby creating a vacancy and subsequent by-election in that Member's constituency. It has not been exercised since 1954. The procedure for expulsion is that a motion is moved, usually by the Leader of the House "that ... be expelled from this House." It is customary that the Member be

³ [House of Commons Library Briefing Paper 02430](#)

ordered to attend to offer an explanation unless it is apparent that no possible excuse could be given. The House also has various powers, albeit rarely used nowadays, to punish strangers (i.e. non-Members) who offend it in some way.

A 2014 case in the European Court of Human Rights (ECHR) has raised questions about the House's ability to discipline Members without providing sufficient mechanisms of appeal.⁴ The defendants, a small group of Hungarian MPs, who had wilfully disrupted the Hungarian Parliament's proceedings by holding up billboards with offensive slogans about the ruling Government party, had been fined on the recommendation of the Speaker in accordance with the Parliament's disciplinary law following a plenary vote taken without debate. While the ECHR found that "parliaments are entitled ... to react and interfere when their elected members fail to comply with disciplinary rules governing the work of Parliament" and "to decide upon their internal working methods, including how members can participate in their work and in debates", it found in favour of the defendants on the basis of Article 10 of the European Convention of Human Rights, which provides the right of freedom of expression. While recognising what it called the 'autonomy of Parliament' the court noted that it 'should not be abused for the purpose of suppressing the freedom of expression of MPs.' The court found that disciplinary measures, particularly those imposed after the event, should include procedural safeguards, such as a statement of the reasons for the sanction and the ability of the MPs concerned to be involved in the process. It concluded that, in the absence of such safeguards the interference with the MPs' right to freedom of expression was not proportionate to the legitimate aims, and that consequently it was 'necessary in a democratic society' and accordingly that a violation of Article 10 had occurred. While the judgement is binding only on the Hungarian Parliament, it sets a precedent which might, in certain circumstances, be applicable to the Parliaments of other states which are signatories to the European Convention on Human Rights, which includes the UK Parliament.

⁴ Karácsony and others v. Hungary, ECHR application 42461/13 and 44357/13