



Mr Ross Vasta MP  
Chair, Standing Committee on Procedure  
Parliament House  
Canberra

Dear Mr Vasta

### **Inquiry into the procedures and practices adopted by the House in response to the COVID-19 pandemic**

Thank you for the invitation to make a submission to the inquiry.

The emergence of the coronavirus COVID-19 has posed a number of challenges for how the House of Representatives has been able to meet. COVID-19 was declared a global pandemic by the World Health Organisation on 11 March 2020, and on 18 March the Governor-General declared that a human biosecurity emergency period was in place in Australia.<sup>1</sup> Physical distancing, good hygiene and limiting the number of people gathering were all identified by government health authorities as key ways to reduce the risk of spreading the coronavirus.

In response to the unfolding health emergency and the consequent effects on behaviours, the House progressively adopted a number of changes to its practices and procedures, as well as putting in place other practical measures to minimise the risk of spreading the virus, and thereby demonstrating that the House was adhering to the same health guidelines as other members of the Australian community. The sitting pattern was altered, to reduce the need for Members to travel and assemble during the early months of the pandemic. Significantly, given the uncertain trajectory of the pandemic and its possible effect on the operations of the Parliament, the House agreed to a number of contingency measures. I outline each of the measures in more detail below.

#### **Adapting the pattern of sittings and order of business**

The House had not been sitting at the time of either declaration, as referred above, and next met as scheduled on 23 March. However, as the first item of business, the Leader of the House moved to suspend standing orders to, among other things, put in place a new order of business for the sitting.<sup>2</sup> The resolution provided for business to be restricted to the introduction and finalisation of bills in the coronavirus economic response package, supply bills, question time and any other business agreed between a Minister and the Manager of Opposition Business. The House also agreed that the Federation Chamber would not meet

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<sup>1</sup> The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* is in force for three months.

<sup>2</sup> *Votes and Proceedings (VP) No. 51 (23.03.2020) p. 825.*

that day, and that at the conclusion of the day's business the House would adjourn until a date and hour to be fixed by the Speaker, despite agreeing also to a revised program of sittings that provided for the next scheduled sitting to be on 11 August. (Previously, the House had been scheduled to sit from 23 to 26 March and then again in the week commencing 12 May.) Together, these resolutions put in place a revised sitting schedule which was designed to address the risks for the Parliament 'during what is anticipated to be the peak point in the transmission of the coronavirus' while at the same time recognising the possible need for the House to be recalled earlier than scheduled, on 11 August.

This need was realised when on 2 April the Speaker notified all Members that he had set 8 April as the date for the next sitting. On 8 April, the focus of the House was on introducing and considering bills to implement further elements of the Government's economic response to the coronavirus pandemic. The order of business for the sitting was once again established by resolution of the House on motion, moved by the Leader of the House, to suspend standing orders. The resolution provided further that the Federation Chamber would not meet that day and that, at the conclusion of the day's business, the House would adjourn until a date and hour to be fixed by the Speaker.

On 29 April the Speaker notified Members that the House would sit on 12 May, with the House then resolving to meet on 13 and 14 May as well.<sup>3</sup> During the week, the House transitioned to a more usual order of business. The sittings featured several ministerial statements and the introduction of a substantial number of bills. While the meetings of 23 March and 8 April had focused largely on urgent legislation, more opportunities for private Members were available in the week beginning 12 May, allowing Members to fulfil their important role representing constituents. This included numerous speaking opportunities in the Federation Chamber. The House also agreed to a revised program of sittings for the remainder of 2020 which would see it next sit on 10 June.

Budget night had been originally scheduled for 12 May. However, on 20 March the Prime Minister announced that, given existing uncertainties, presentation of the Budget would be delayed until October.<sup>4</sup> As an interim measure, three supply bills were considered and passed on 23 March, to ensure funding would be available from 1 July 2020 for the continuation of government programs and service delivery. The supply bills provided for appropriations broadly based on seven-twelfths, rather than the more usual five-twelfths, of the estimated 2020-21 annual appropriations. The Treasurer is now scheduled to present the Budget on 6 October, in accordance with the altered sitting schedule.

### **Amended standing orders**

There are some occasions when the House agrees to suspend standing orders to vary its order of business, enable motions to be moved without notice, alter time limits for speeches or enable items of business to be called on immediately. Under the standing orders in place more recently, a motion to suspend standing orders moved without notice could be carried only by an absolute majority (currently 76 Members).

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<sup>3</sup> VP No. 53 (12.05.2020) pp. 857-8.

<sup>4</sup> 'Update on coronavirus measures', media statement by the Prime Minister, 20 March 2020.

On 23 March, the House agreed to amend standing order 47(c)(ii), to allow a motion to suspend standing orders to be carried by a simple majority of Members present, with the agreement of the Leader of the House and Manager of Opposition Business.<sup>5</sup> In moving to amend the standing order, the Leader of the House noted that circumstances might arise where the House was not able to form the absolute majority necessary to suspend standing orders without notice and it would be prudent to have an alternative mechanism.<sup>6</sup>

On both 8 April and 12 May, motions to suspend standing orders to alter the order of business for the sittings were agreed to without the need for an absolute majority. The Leader of the House noted on both occasions that the proposed approach had been discussed and agreed with the Manager of Opposition Business.<sup>7</sup>

### **Practical measures to take account of precautions against the pandemic**

#### *Pairing arrangements between Members*

Since 23 March, an extensive system of pairs has been in place. Pairing operates as an unofficial arrangement between Members about voting intentions, and has been organised by party whips, to enable a Member on one side of the House to be absent from divisions when a Member from the other side is to be absent at the same time. Through this arrangement, the relative voting strengths of the parties are maintained. To reduce the need to travel and to facilitate social distancing within the chamber, party whips have arranged a large number of pairs for each sitting during the period.

The practice of recording pairs has varied throughout the history of the Parliament. Until recently, pairs had not been reflected in the official records since 2013. On 23 March and 8 April, on indulgence, the Chief Government Whip and Chief Opposition Whip read the names of their respective paired Members into the *Hansard*.<sup>8</sup> However, on 12 May the Speaker announced that, given that large numbers of pairs had been necessary, pairs would be recorded in the *Votes and Proceedings* and the *Hansard*.<sup>9</sup> In practice, the whips provide details of paired Members, which are then reflected in the records of divisions.

The high number of pairs played an important role in reducing the number of Members who were present in the chamber during divisions. However, it did not prevent Members from being present in the chamber at other times, including to form a quorum on commencement of the sitting and to participate in debate. Member participation was particularly noticeable during the sitting period from 12 to 14 May, when there were between 38 and 41 pairs for each division, but up to 121 Members attended the chamber on any one day and a total of 130 Members attended at some point across the three days. On 8 April only two of the 59 Members present were paired. On 23 March, none of the 90 Members present was paired.

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<sup>5</sup> VP No. 51 (23.03.2020) p. 834.

<sup>6</sup> HR Deb (23.03.2020) p. 2902.

<sup>7</sup> HR Deb (08.04.2020) p. 2907; HR Deb (12.05.2020) (*proof*) p. 1.

<sup>8</sup> HR Deb (23.03.2020) pp. 2898-9; HR Deb (08.04.2020) pp. 2998-9.

<sup>9</sup> HR Deb (12.05.2020) (*proof*) p. 2.

### *Chamber seating and conduct of divisions*

Within the chamber, a number of changes were made to maintain social distancing and reduce contact between people. The increased spacing between seats meant that not all Members were able to sit in their usual places. New seating plans were developed for each sitting, to maximise the number of Members able to participate in proceedings during the week. Arrangements were based on calculations which took into account advice from the Chief Medical Officer on distancing requirements. The Speaker asked Members to sit only in the seat allocated to them with their name.<sup>10</sup>

Ministers and shadow ministers allocated seats on the front benches spoke from the despatch boxes. Other ministers and shadow ministers, as well as backbench Members, spoke from their allocated places. Members were also asked to vote sitting in their allocated seats.<sup>11</sup>

In the week of 12 May, when many Members were present but paired for divisions, live microphones for shared use were set up at two dedicated seats near the ceremonial entrance to the chamber. Members who did not have allocated seats could speak from these positions, which were to be cleaned by attendants between users. The dedicated seats have been replaced by two standing lecterns with live microphones for the sitting weeks beginning 10 June in order to free up the seats.

Where divisions were anticipated, questions were put in a form that avoided ‘crossover’ divisions—in other words, each question was put in such a form that government Members would be expected to vote ‘Aye’ and the opposition Members, ‘No’. Therefore Members could continue to sit in their allocated seats for the division. Additional seats were identified for cross-bench Members (normally seated to the left of the Chair) who wished to vote ‘Aye’ on certain questions.<sup>12</sup>

In particular, the Speaker put the question on opposition amendments in the form ‘That the amendment be disagreed to’. This allowed government Members, voting ‘Aye’, to stay to the right of the Chair and opposition Members, voting ‘No’, to stay to the left. For second reading amendments, the Chair put the question in the form ‘That the words proposed to be omitted stand part of the question’. As government Members opposed the amendments, this avoided the need for most Members to swap sides when dividing on the question. While the formulation ‘That the words proposed to be omitted stand part of the question’ had been part of the standing orders until July 2019, in practice the alternative form of putting the question had been used since 2011, due in part to confusion with the expression.<sup>13</sup>

During divisions, the tellers conducted their counts from the table normally used by Hansard editors, who were not present in the chamber for the sittings.

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<sup>10</sup> See for example HR Deb (23.03.2020) p. 2769.

<sup>11</sup> *Ibid.*

<sup>12</sup> HR Deb (23.03.2020) pp. 2859-60.

<sup>13</sup> VP No. 3 (4.07.2019) p. 35; see also discussion in House Standing Committee on Procedure, *Maintenance of the standing orders—interim report*, May 2018, p. 13



### *Managing the chamber environment and services*

Other practical measures put in place included the provision of hand sanitiser in the chamber, and leaving most doors to the chamber open (except during divisions) to minimise the need to touch door handles. However, Members were asked not to stand in the entrances in order to view the proceedings.

Occupants of the advisers' boxes were required to leave when divisions were called, and only bottled water was provided, with Members able to bring their own water. Services provided by chamber attendants were also reduced, with only essential documents being delivered.

Similar measures were put in place in the Federation Chamber, and photographers from AUSPIC and the press gallery were granted permission to take photos of proceedings, given the historic nature of the meetings.<sup>14</sup>

### **Restricted chamber access for non-members**

Section 6 of the *Parliamentary Precincts Act 1988* provides that the parliamentary precincts are under the joint control and management of the Presiding Officers. Each presiding officer is responsible separately for their respective House, and on 16 March, the Speaker and the President jointly announced that the galleries in each chamber for the parliamentary sitting week commencing Monday 23 March would be closed to the public.<sup>15</sup>

Importantly, the public continued to have access to the proceedings in real time through the parliamentary website ([aph.gov.au](http://aph.gov.au)) and via the radio broadcast (as per the official schedule, shared with the Senate), while question time continued to be televised. As the Speaker indicated to the House on 23 March, while access to the chamber press gallery was restricted to photographers, the media were able to use the second-floor enclosed galleries at any time during the course of the sitting.<sup>16</sup> Further, the *Votes and Proceedings* and *Hansard* record of parliamentary debates were published as normal.

### **Contingency measures**

As mentioned, the House also put in place a number of contingency measures in the face of considerable uncertainty. Most notably, on 23 March, on motion of the Leader of the House, the House agreed that:

- (1) the House may meet in a manner and form not otherwise provided in the standing orders with the agreement of the Leader of the House and the Manager of Opposition Business, with the manner in which Members may be present (including for the purposes of achieving a quorum) to be determined by the Speaker; and

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<sup>14</sup> HR Deb (12.05.2020) (*proof*) p. 123.

<sup>15</sup> *COVID-19: Statement by the Presiding Officers regarding temporary and precautionary changes to Parliament House operations*, released 16 March 2020. Parliament House was closed to the public from close of business on 25 March.

<sup>16</sup> HR Deb (23.03.2020) p. 2769.

- (2) any consequent changes to the rules and orders necessary to enable such a meeting to commence may be determined by agreement of the Leader of the House and the Manager of Opposition Business.

To date, these provisions have not been relied upon. In speaking to the motion, the Leader of the House explained that the provisions would ensure that the Parliament retained the necessary flexibility to respond to the extraordinary circumstances caused by the coronavirus. He emphasised that the resolution did not alter established requirements, such as the number of Members required for quorum, but were intended to provide a mechanism by which agreement between the Leader of the House and the Manager of Opposition Business, with the concurrence of the Speaker, could be reached to alter standing orders to the extent that may become necessary. He also noted the extraordinary context—namely, while a period of biosecurity emergency remained in force—in which the motion was being considered.<sup>17</sup>

The House also made certain provisions in case it was not able to meet for a long period of time. Under section 38 of the Constitution, a Member's place becomes vacant if, without the permission of the House, he or she does not attend the House for two consecutive months of any session of the Parliament. For this reason, in line with the practice normally followed at the end of a period of sittings, on 23 March, 8 April and 14 May the House agreed to grant leave of absence to all Members 'from the determination of this sitting of the House to the date of its next sitting'.<sup>18</sup> This ensured that, in the event that the conditions of the pandemic meant that the House could not meet, Members were not at risk of breaching their constitutional obligations.<sup>19</sup>

### Concluding remarks

I am conscious that the terms of reference for your inquiry look forward as well as back and that my remarks so far have focused on what has occurred to date. In concluding, I would like to reflect on some of the important considerations these recent extraordinary sittings have raised.

Broadly speaking, the House has four principal functions:

- formation of government;
- a legislative role (making new laws and amending existing laws);
- a representative role (with each Member representing an electorate); and
- scrutiny of government (including through question time, the parliamentary committee system and scrutiny of government expenditure).<sup>20</sup>

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<sup>17</sup> HR Deb (23.03.2020) pp. 2900-1.

<sup>18</sup> VP No. 51 (23.03.2020), p. 833; VP No. 52 (8.04.2020), p. 848; VP No. 55 (14.05.2020) p. 895.

<sup>19</sup> While advice from the Solicitor-General indicates that 'attend the House' could be interpreted to mean 'attend the House when it is sitting', for the avoidance of doubt it is the normal practice at the end of a period of sittings for a Minister to move that leave of absence be given to every Member to the date of the House's next sitting, to cover the absence of Members from the House between the main periods of sittings each year. See *House of Representatives Practice (HRP)*, 7<sup>th</sup> edition, pp. 158-9.

<sup>20</sup> For more discussion of these roles, see *HRP* pp. 37-41.

In the event of similarly disruptive circumstances in future, consideration should be given to how the House could continue to perform each of these roles in the particular circumstances of the period. For instance, during this biosecurity emergency period, while the House changed its sitting pattern to accommodate the new requirements imposed by the pandemic, it was still able to achieve more than a quorum and meet in Parliament House. Thus it was able to consider draft legislation and make and amend laws. At each sitting during the period, question time was held, allowing scrutiny of government to continue. In the sitting week beginning 12 May, there were opportunities for private Members in both the House and the Federation Chamber, including Members' statements, constituency statements and adjournment debates. Further, many committees used teleconference and videoconference technologies to meet and hold hearings.

Another important consideration is Members' ability to attend sittings. For example, the pandemic disrupted flight schedules and introduced different requirements relating to crossing state borders. This meant that Members' ability to travel interstate quickly was limited. On occasions when the Speaker set an alternative day for the next meeting of the House, Members were notified with sufficient time to make the necessary arrangements and travel to Canberra. Further, while an informal system of pairs was put in place to reduce the number of Members who needed to attend, any Member who wished to participate was able to. The limiting factor on participation was where medical advice indicated that a Member should not attend, for reasons of either their own health vulnerabilities or the need for them to quarantine themselves.

#### *Experiences at other parliaments*

I am aware that some other national parliaments have adopted different measures to enable their parliaments to continue to meet during the pandemic. For example, both remote participation and remote voting have been put in place by the House of Commons in the United Kingdom.<sup>21</sup> In New Zealand, proxy voting arrangements, already a feature of their Parliament, have been amended to limit the numbers of members who need to be present in the chamber.<sup>22</sup> The House of Commons in Canada has established a Special Committee on the COVID-19 Pandemic, composed of the membership of the entire House but with a quorum of seven, which meets both in person and virtually, to allow for questions to cabinet ministers, take-note debates, ministerial statements and the presentation of petitions.<sup>23</sup>

I note that each of these countries has different constitutions to Australia's and has experienced and responded to the pandemic differently. The responses that their parliaments have adopted have been tailored accordingly. In this instance, the Australian House of Representatives has not found it necessary to adopt measures such as proxies, remote voting or electronic participation. In the future, if the House needed a different approach to conducting divisions, it could resolve to adopt proxy voting by a similar means to the current provisions for nursing mothers. In relation to possible remote participation in the House by Members, following the sitting on 23 March and given the uncertainty surrounding how the House might have been able to next meet, the parliamentary departments

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<sup>21</sup> See the House of Commons *Votes and Proceedings* of 21 and 22 April 2020.

<sup>22</sup> See New Zealand House of Representatives Sessional Orders (52nd Parliament) as at 30 April 2020.

<sup>23</sup> See the Canadian House of Representatives *Journals* of 20 April 2020.

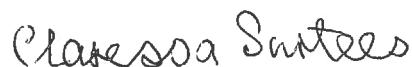
considered whether a mechanism might have been available to enable parliamentarians to remotely participate in chamber proceedings using video conferencing technology. The contingency measures might have been able to support such an initiative. If required, further examination of video conferencing technology in the House could be conducted.

Continued public access to the proceedings of the House, even though physical access to the building may be restricted, is vital. This is consistent with the principle that parliament conducts its business, with the rarest of exceptions, in public.<sup>24</sup> As discussed above, through electronic means, as well as radio, television and print, the general public has been able to access and be informed about the work of the House throughout the period of the pandemic. The media's continued access to the work of the Parliament was also expressly facilitated.

A final key consideration when adopting extraordinary measures is the length of time for which the measures might be in place. The biosecurity emergency declaration issued by the Governor-General in March is still in place at the time of finalising this submission. It is not possible to be definitive about the length of time the altered measures will endure. However, as discussed above, in debating some of the formal contingency measures, Members have been careful to note the extraordinary context in which they have been introduced.

Please let me know if the committee would like any further information. I would of course be happy to attend a meeting to discuss my submission if the committee would find it helpful.

Yours sincerely



Claressa Surtees  
Clerk of the House

10 June 2020

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<sup>24</sup> See HRP, p. 118.