

The Senate

Procedure Committee

Routine of business

Remote participation in Senate proceedings

First report of 2020

August 2020

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ISBN 978-1-76093-103-2

Membership of the Committee

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Senator Sue Lines (Deputy President and Chair of Committees, **Chair**)

Senator the Hon Mathias Cormann (Leader of the Government in the Senate)

Senator the Hon Penny Wong (Leader of the Opposition in the Senate)

Senator Catryna Bilyk (Tasmania)

Senator Slade Brockman (Western Australia)

Senator Johnathon Duniam (Tasmania)

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Senator Rachel Siewert (Western Australia)

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Printed by the Senate Printing Unit, Parliament House, Canberra.

Procedure Committee

First report of 2020

The Procedure Committee reports on two matters: the adoption on a permanent basis of temporary orders streamlining aspects of Senate business; and the development of rules for remote participation in Senate proceedings.

Routine of business

1.1 On 3 December 2019, the Senate adopted a range of temporary orders intended to streamline aspects of Senate business, as recommended by the committee in its third report of 2019.¹ In accordance with the undertaking given in that report, the committee has reviewed the operation of those orders and **recommends** that they be adopted on a permanent basis.

Remote participation in Senate proceedings

1.2 On 7 August 2020, at the request of the Manager of Opposition Business (Senator Gallagher), the President referred to the Procedure Committee the development of rules to allow senators to participate in Senate proceedings by video link.² The committee met by teleconference to consider the matter.

1.3 The authority for the Senate to adopt such rules is found in section 50 of the Constitution, which empowers each House to make “rules and orders with respect to ... the order and conduct of its business and proceedings...”. The nature and extent of these rules is limited only by the Constitution. Of particular importance are Constitutional provisions:

- requiring “the presence” of a quorum “to constitute a meeting of the Senate for the exercise of its powers” (s. 22); and
- providing that every senator is entitled to vote on every question (s. 23).

1.4 The Constitution also contains the apparent requirement that the Parliament meet at the seat of Government (s. 125).

1.5 Options for a meeting of the Senate involving remote participation include:

- a meeting with a quorum physically present and remote participation facilitated;

1 Senate Standing Committee on Procedure, *Third report of 2019*, December 2019.

2 The correspondence is included in Appendix A.

- a meeting with a small number of senators present (to constitute a meeting at the “seat of government”) and remote senators counted for the purposes of a quorum.

1.6 The first option is the focus of the proposal that has been referred to the committee. It has been demonstrated as a proof of concept in each chamber. The possibility of the second option being required in other circumstances should not be discounted, but is not further discussed here.

The proposal

1.7 The proposal from Senator Gallagher asks the committee to consider whether “limited accommodation can be made for Senators unable to attend Parliament physically, to make a remote contribution to debate.” More specifically, “the Opposition proposes that Senators may, via videopresence in the chamber:

- seek the call;
- receive the call; and
- address the Senate.”

1.8 Finally, the letter notes that, “Under these proposals, there would be no change to the requirement for a physical presence to make quorum, nor the existing voting process in the Chamber.”

1.9 In considering the proposal, the committee agreed that the circumstances of the pandemic warrant a significant evolution of existing rules, to enable senators who are effectively prevented from attending to have their voices heard in the Senate. However, the committee considered that the rules for remote participation of senators should be developed on the basis of an overarching principle that the proceedings of the Senate are to be managed in the Senate itself. This reflects a view about the primacy of attendance in the Parliament as the key means for senators to engage in and determine its work. The one exception to this principle recommended by the committee is that senators participating remotely should be able to move amendments and requests for amendments in committee of the whole, to ensure that all parties represented in the Senate can have their legislative proposals considered and determined.

1.10 Senator Siewert noted the reservations of the Australian Greens in relation to remote participants not having access to the full range of proceedings under the standing orders.

1.11 The committee views the likely adoption of the proposed rules for the next sitting fortnight as a trial of the rules, and will review them as circumstances require. The next section of the report outlines the development of proposed rules for remote participation.

Remote participation in proceedings

1.12 The committee considers that it is open to the Senate to authorise senators to participate in Senate proceedings by audio or video link, on the same principles that

support remote participation in proceedings of parliamentary committees. Senators and witnesses have routinely participated in committee proceedings by teleconference and videoconference since the Senate expressly authorised its committees to meet by “electronic communication” in 1997. Even before that time the view was taken that parliamentary privilege would adhere to contributions made by remote participants in committee meetings, provided a quorum was assembled in one place. The element added in 1997 was to authorise committees to meet with a dispersed quorum, provided participants could communicate contemporaneously.³

1.13 If remote participation in Senate proceedings is authorised, there is no need to make specific provision for parliamentary privilege, as the protections adhering under privilege turn on the definition of “proceedings in parliament” in s. 16 of the *Parliamentary Privilege Act 1987*, being:

...all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee...

1.14 While decisions about the application and interpretation of parliamentary privilege in this sense is a matter for the courts, it is clear that contributions made by remote participants will meet that definition.

1.15 To facilitate contributions by video link, rules will be required to accommodate senators who are participating remotely seeking and receiving the call to speak (*cf.* s.o. 186). Standing orders have effectively been varied by leave over recent months, to allow senators to seek the call and speak from seats that are not their own, and to speak from the lecterns positioned at either side of the chamber.

1.16 The proposal before the committee is that remote participants may not count toward the quorum. The standing orders about forming a quorum turn on senators being “present”. To avoid doubt about what is intended, the committee considers it sensible to specify that this is being taken to mean “present in the chamber”. The rules should also specify that remote participants may not raise points of order or draw attention to the lack of a quorum.

1.17 In line with the committee's position that proceedings should be managed from the Senate, the committee recommends that the rules specify that senators participating remotely:

- may not move motions or amendments, other than amendments and requests for amendments to legislation in committee of the whole;
- may not propose or be counted in support of a proposal to discuss an MPI or urgency motion (although they may speak in those discussions and debates).

1.18 The committee notes that senators present in the Senate chamber may move motions on behalf of senators who are absent, or who are participating remotely. For

3 *Odgers' Australian Senate Practice*, 14th ed., pp. 529 – 30. Senate Standing Committee on Procedure, *Second report of 1995*, pp. 2 – 4.

the purposes of the temporary orders on formal motions, those motions will be allocated to the senator on whose behalf they are moved.

1.19 To avoid doubt on other matters, the committee recommends that the rules specify that:

- the standing orders and other orders of the Senate, including the standing orders relating to the conduct of senators and rules of debate otherwise apply (to the extent they are capable of applying) in relation to senators participating in proceedings remotely; and
- the contributions of remote participants form part of Senate proceedings and are to be incorporated in the *Hansard* record.

1.20 There are several standing orders about “delivering” notices (so 76), “lodging” petitions (so 69), “presenting” documents (so 62, 63) or having them “laid on the table” (so 164) etc, all of which could be interpreted as including delivery etc. of a digital copy. However, the committee considers that it would be preferable to specify that delivery of a digital copy to the President or the Clerk suffices for each of those (and similar) purposes.

Voting

1.21 The proposal before the committee is that senators must attend the Senate to call for and vote in divisions. The committee agrees that the rules should be developed on this basis. The standing orders do not need to be varied to enable this to happen, as they require the presence of senators in the chamber to vote. Similarly, the standing orders require a senator to be present in the chamber to call (or support the call) for a division.

1.22 The committee makes the following observations about voting in these circumstances:

There is nothing to prevent the positions of senators participating remotely being taken into account when questions are determined on the voices, although there may be logistical challenges in doing so.

Remote participants will often be paired. Pairing is an unofficial practice coordinated by the whips, and not a matter dealt with in the standing orders.

The committee reminds senators of the option used recently of senators and parties recording their votes by declaring their position in lieu of calling a division, which could also accommodate remote participants having their positions recorded.

1.23 Although s. 23 of the Constitution provides for each senator to have a vote on any question, the exercise of this right has always required the presence of the senator in the chamber. The committee considers that it may be open to the Senate (in other circumstances) to determine that senators participating remotely should have their votes recorded in a division. Again, however, these measures are not the focus of the current proposal.

Recommendation and rules

1.24 The Procedure Committee **recommends** the following rules for the remote participation of senators in Senate proceedings, which may be adopted by the Senate as required. The rules have been developed and considered in the context of the COVID-19 pandemic. While their adoption is a matter for the Senate, the committee notes that they are intended to provide a means for senators to participate in Senate proceedings while they are prevented from physically attending the Senate because of travel restrictions, quarantine requirements or personal health advice.

Rules for the remote participation of senators in Senate proceedings

While these rules are in effect:

- (1) A senator may seek and receive the call to speak by video or audio link by addressing the President. Wherever practicable, this should be in accordance with a list of speakers provided through the whips.
- (2) Senators participating remotely:
 - (a) may not move motions or amendments, other than amendments and requests to legislation in committee of the whole; and
 - (b) may not propose or be counted in support of a proposal to discuss an MPI or urgency motion.
- (3) Senators may not be counted in the formation of a quorum, may not draw attention to the lack of a quorum, may not raise points of order, and may not call for or participate in a division unless they are physically present in the Senate chamber.
- (4) To avoid doubt:
 - (a) the standing orders and other orders of the Senate, including the standing orders relating to the conduct of senators and rules of debate, otherwise apply to senators participating remotely, to the extent they are capable of applying; and
 - (b) the contributions of remote participants form part of Senate proceedings and are to be incorporated in the *Hansard* record.
- (5) Standing orders that require or rely on the provision of documents to the President or the Clerk, as the case may be, or the presentation of documents to the Senate, will be satisfied by the provision or presentation of a digital copy of the document. A document provided in digital format will not be taken to be received unless its receipt is acknowledged by or on behalf of the President or the Clerk.



Appendix A

Senator Katy Gallagher

Shadow Minister for Finance

Shadow Minister for the Public Service

Manager of Opposition Business in the Senate

Senator for the Australian Capital Territory

Senator Scott Ryan
President of the Senate
Parliament House
Canberra
ACT 2600

Dear Mr President

On March 23, 2020 the Senate passed a Resolution that would allow it to meet in a manner and form not otherwise provided for in the Standing Orders with agreement of both the Leader of the Government in the Senate and the Leader of the Opposition in the Senate.

This Resolution was designed to allow the Senate to meet if the conditions created by the COVID-19 pandemic prevented it to meet in the usual way.

The outbreak of COVID-19 in Victoria, and emerging concerns in other parts of the country, have resulted in strict quarantine conditions being placed on many Senators who wish to attend the upcoming parliamentary sittings, due to begin on August 24.

These conditions, although necessary to minimise the risk of COVID-19, mean that many senators who wish to come to Canberra are unable to. Still other Senators, not in virus-affected states or territories, will choose not to attend Parliament out of an abundance of caution.

During the next sittings, the Parliament will debate a number of significant issues of national importance, including the extension and reduction of key income supports for many Australians.

Therefore, it is appropriate to consider whether limited accommodation can be made for Senators unable to attend Parliament physically, to make a remote contribution to debate.

I ask you to refer this matter to the Procedure Committee immediately for consideration under Standing Order 17(3). This would allow the Committee to consider all options which would allow members to contribute to debate in the Chamber via videopresence, for the upcoming sitting fortnight 24 August – 3 September only. I note the motions agreed to on 23 March and 8 April provided that the rules and orders necessary to constitute a meeting of the Senate in a manner and form not otherwise provided for in the standing orders may be determined by the Procedure Committee.

In seeking for this matter to be considered by the Procedure Committee, the Opposition proposes that Senators may, via videopresence in the chamber:

- seek the call;
- receive the call; and
- address the Senate.

The Opposition also proposes that comments made by Senators appearing via videopresence would be recorded in Hansard, as if they had been physically present in the Chamber.

Under these proposals, there would be no change to the requirement for a physical presence to make quorum, nor to the existing voting process in the Chamber.

I note that the Resolution of the Senate referenced above has lapsed and is no longer in affect. Therefore, any agreed changes to the Standing Orders or the way the Senate meets would require a new resolution of the Senate, which the Opposition suggests could be agreed to via motion and moved by leave, at the commencement of the sitting day on August 24, 2020.

I trust we can work cooperatively on this matter, and I look forward to further a discussion.

Yours sincerely

Katy Gallagher
Manager of Opposition Business in the Senate
Senator for the ACT

7 August 2020

cc – Senator Ruston, Manager of Government Business in the Senate.



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE

SENATOR THE HONOURABLE SCOTT RYAN

Senator Sue Lines
Chair
Senate Standing Committee on Procedure
Suite SG.44
Parliament House
Canberra ACT 2601

Dear Chair,

Reference of matters to the Senate Standing Committee on Procedure

I have received a letter from the Manager of Opposition Business, Senator Gallagher, asking that I refer to the Procedure Committee, pursuant to standing order 17(3), the development of rules to accommodate the remote participation of senators in Senate proceedings by videopresence, where they are unable to attend the upcoming sittings of Parliament because of conditions created by the COIVD-19 pandemic.

I am happy to refer the matter, as requested.

A copy of Senator Gallagher's letter is attached.

Yours sincerely,

SCOTT RYAN

7 August 2020