



The Hon Tony Burke MP
Manager of Opposition Business
Shadow Minister for Industrial Relations
Shadow Minister for the Arts
Member for Watson

Committee Secretary
Standing Committee on Procedure
PO Box 6021
Parliament House
Canberra ACT 2600

By email: procedure.committee.reps@aph.gov.au

RE: Submission to House of Representatives Procedure Committee inquiry into the procedures and practices put in place during the COVID-19 pandemic

Dear Secretary

The global COVID-19 pandemic has challenged and changed normal patterns of operation for businesses and organisations around the world – and in that sense the House of Representatives has been no different.

But in important ways, the House has to be treated very differently. The Parliament is the heart of our democracy - where laws are made, the government is held to account, and Australians are represented. It is vital that these functions continue during this crisis – even if adaptations have to be made.

The declaration of a human biosecurity emergency in Australia on 18 March 2020 presented some clear challenges for the operation of the House. The House is a large gathering of people from all corners of the nation, who spend extended amounts of time in one building. I understand the usual way of the House operating presented an increased risk of transmission of COVID-19.

This challenge was approached by Members of Parliament and the Presiding Officers in a spirit of goodwill and cooperation, and with a few notable exceptions which I will refer to below, the vast majority of decisions about the operation of the House were made by agreement.

At the outset, it is important to note that the House could not have successfully functioned through this crisis without some very hard work from the staff of the Parliament. They deserve to be recognised and praised for ensuring the day-to-day running of the House could continue despite the challenges.

The sitting calendar

On 23 March 2020, the Leader of the House presented a revised sitting calendar which did not provide for any further scheduled sittings of the House until 11 August - a gap of some 20 weeks. In Labor's view, this was unacceptable and unnecessary and sent a terrible message about Australia's democracy. Labor opposed the revised sitting calendar.

There are provisions in the Standing Orders that allow the Speaker to cancel scheduled sittings of the House when it is not sitting. Therefore, it was unnecessary for the government to cancel the scheduled sittings of the House, as these could be cancelled on a case-by-case basis depending on the evolving health situation. The presumption should always be in favour of the House sitting.

The government's decision to suspend sittings for such a long time provoked significant backlash, and resulted in the government presenting a further revised calendar in May which added additional sittings.

The experience of the past few months, and indeed the experience of the House during wartime and a previous pandemic, has shown that the House can function even in difficult circumstances. Sittings of the House must not be cancelled lightly.

Practical operations of the House

Some changes to the day-to-day operations of the House, and the Federation Chamber were made. These included voluntarily limiting the number of Members and staff who would attend during sitting weeks, with pairing arrangements agreed between the two major parties, as well as a number of differences inside the chambers. Members were required to observe physical distancing in the chambers and were allocated spaced-out seating according to a temporary seating plan. Doors to the chambers were left open, and only touched by attendants during divisions. There was an overall reduction in the number of attendants in the House, and their normal duties were varied – the attendants were only available to the Speaker, and not to Members or advisers, and they did not deliver glasses of water to members. Members were instead provided with their own small bottles of water. Hansard workers did not sit in the House. Members who were not sitting on the frontbench were required to speak from their allocated seats rather than travelling to the despatch box to speak. The despatch box, as the only common touch point in the chambers, was wiped down by attendants between speakers as necessary. The despatch box itself was moved further away from the Clerks' table, to achieve proper social distancing. The tellers were moved to the middle of the House during divisions, rather than next to the Speaker, also to achieve proper social distancing. The public galleries were closed, press gallery attendance was modified but not withdrawn, and the building was closed to the public and non-essential visitors. This, of course, made the House and Federation Chamber look and feel very different.

Given the House and its Members represent the Australian people, it is regrettable that in settling the arrangements for the chamber public attendance in the galleries was not accommodated with appropriate physical distancing and other measures.

On the single sitting days of March 23 and April 8, legislation was restricted by agreement to urgent COVID-19 related matters. This was not the case for the 12-14 May sitting session, when the government's normal legislative business resumed. However throughout these sittings, the

opposition insisted that the order of business run as normally as possible, including Question Time being held every day the House sat. Given Question Time is the primary mechanism for the government to be held to account it was essential that it proceed.

One final innovative measure that was implemented by the Speaker was a change in how questions were put in the House, so that members of the government and opposition did not have to swap sides when divisions were called. This avoided two potential dangers – Members sitting in each other’s allocated seats, and potential chokepoints around the chamber and behind the Speakers’ chair, where physical distancing would be impossible. Questions were put by the Speaker in the affirmative where the government was expected to vote in favour, and negative where the government was expected to vote against. I thank the Speaker for being willing to implement this change, which worked well, and explaining it to the House to eliminate any confusion.

Changes to the Standing and Sessional Orders

Two measures were put in place, one as a change to the Standing Orders and one as a Sessional Order. Both were made by agreement between the government and opposition.

The change to Standing Order 47(c) allowed the House to agree to suspend Standing Orders without notice with the agreement of a majority of Members present instead of an absolute majority if agreed by the Leader of the House and the Manager of Opposition Business. The purpose of this change was to allow for a smaller number of Members to be brought to Parliament. The inclusion of the language “if agreed by the Leader of the House and the Manager of Opposition Business” was repeated in a number of motions to suspend Standing Orders relating to the business of the House, and reflects the degree to which the House operated with consensus.

The following temporary Sessional Order is also worthy of note:

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

(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.

Allowing for any variation of the “manner and form” in which the House sits is something that must be done with great caution. The presumption must always be that the House should sit in the way that it has always done – that is, in person, in Parliament House, in our nation’s capital. This is a practice which must be safeguarded – any erosion of it would be dangerous to our democracy.

However, it was agreed between the two major parties and the Presiding Officers that the unique circumstances of the COVID-19 crisis required some limited provision for Parliament to function if Members were unable to physically travel to Canberra, or if the health risk of gathering at Parliament was so great as to be unacceptable. This temporary Sessional Order was designed to provide for that possibility – however remote.

There are several important things to note about this temporary Sessional Order. First, it has - to date – not needed to be used. It was designed as a contingency to deal with a particular set of circumstances which thankfully have not yet arisen and we must hope never will. In fact, the way the House has managed to successfully function in person, regardless of the many difficulties, demonstrates that a temporary Sessional Order like this should not be used except in the most extraordinary circumstances where the continued sittings of the House would not be possible without such a temporary Sessional Order. Secondly, the inclusion of the requirement that decisions were to be made by agreement between the Leader of the House and the Manager of Opposition Business is an important one, reflecting the need for the House to only agree such fundamental changes with consensus and not on the basis of the superior numbers of the government. Thirdly, it is vital that the intention for this provision to be a temporary measure only is recognised – as a reflection of the unique and time-limited circumstances of the COVID-19 crisis. Such a provision should never be considered as a permanent inclusion in the Standing Orders. Any readers who interpret this temporary provision as some kind of endorsement for a future “virtual Parliament” or similar would be very much in error.

Conclusion

Of course, the COVID-19 pandemic is not over either in Australia or across the world. For that reason, it is important that the House learn from the sittings in the earlier part of this year, so that if the House is again faced with significant challenges at some point in the future, it can successfully manage them so as to preserve the functioning of the Parliament and our democracy.

I thank the committee for considering my submission.

Yours Sincerely

A handwritten signature in black ink that reads "Tony Burke". The signature is written in a cursive style with a prominent crossbar on the 'B'.

5 June 2020